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REMILO DAVIDSON
ARAPAHOE COUNTY

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
ORCHARD DRIVE SUBDIVISION

THIS DECLARATION of Covenants, Conditions and Restriction (the "Declaration") is made this day of November, 1995, by Lone Wolf Ventures, LLC, a Colorado limited liability company (hereinafter referred to as the "Declarant").

RECITALS:

- A. Declarant is the owner of certain real property located in Arapahoe County, Colorado (the "Common Interest Community") described more particularly as Lots 1 through 6, inclusive, Orchard Drive, according to the plat thereof recorded January 10, 1995 in Book 117, at Page 76, Reception No. 95-002926 in the Arapahoe County real property records, as amended by that certain administrative replat entitled Orchard Drive, Filing No. 2, recorded March 20, 1995 in Book 119 at Page 70, Reception No. 95-26296 in the Arapahoe County real property records ("Property"), and Declarant desires to create thereon an exclusive residential community through the granting of specific rights, privileges, and easements of enjoyment which may be shared and enjoyed by all residents thereof.
- B. This Common Interest Community shall be a Planned Community as defined by the Colorado Common Interest Ownership Act, C.R.S. §38-33.2-101, *et seq.*
- C. Declarant desires to insure the attractiveness of the individual lots and community facilities within the Common Interest Community to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of the Common Interest Community. In order to achieve this, Declarant is desirous of subjecting the Common Interest Community to the covenants, conditions, restrictions, easements, charges and liens set forth herein, each and all of which is and are for the benefit of the Common Interest Community and each Owner thereof.
- D. The Common Interest Community shall include a *diminishing* amount of common area consisting of a green belt and associated automatic sprinkler system, concrete block, stone and stucco entry way and wall fronting along Orchard Drive, and perimeter fencing surrounding the east, south and west boundaries of the Property. Such areas and facilities are hereinafter designated "Common Elements."
- E. In order to preserve, protect and enhance the values and amenities of the Common Interest Community, Declarant has deemed it desirable to create a legal entity which shall be delegated and assigned the powers of owning, maintaining and administering all or various portions of the Common Elements, and also administering and enforcing the provisions of this Declaration, together with collecting, disbursing and accounting for the assessments and charges herein contemplated. To this end, the Declarant has caused the Orchard Drive Homeowners Association to be incorporated under the laws of the State of Colorado as a non-profit corporation for the purpose of enforcing the covenants, conditions, restrictions, easements, charges and liens set forth

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herein, and exercising the foregoing functions with respect to the Common Elements, as hereinafter described.

NOW, THEREFORE, the Declarant declares that all of the Property shall be held, transferred, sold, conveyed, leased and occupied subject to the covenants, conditions, restrictions, easements, charges, liens and rights hereinafter set forth or set forth in the Plat, all of which shall run with the land. In addition, Declarant hereby submits the Property to the provisions of the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, *et seq.*, as the same may be amended from time to time (the "Act"). In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable.

ARTICLE I

DEFINITIONS

When used in this Declaration, the following words (unless the context shall prohibit or there shall be a specific statement to the contrary) shall have the following meanings:

- A. "The Association" shall mean and refer to the Orchard Drive Homeowners Association, a Colorado non-profit corporation, its successors and assigns.
- B. "Common Elements" shall mean and refer to the green belt and associated automatic sprinkler system, concrete block, stone and stucco entry way and wall fronting along Orchard Drive, the perimeter fencing surrounding the east, south and west boundaries of the Property, together with all improvements, personal property, or facilities now or hereafter constructed or situated thereon. The "Common Elements" are subject to the notes, covenants, and other conditions set forth in the Plat.
- C. "Common Interest Community" shall mean and refer to Orchard Drive, Filing No. 2, according to the plat thereof recorded January 10, 1995 in Book 117, at Page 76, Reception No. 95-002935 in the Arapahoe County real property records, as amended by that certain administrative replat entitled Orchard Drive, Filing No. 2, recorded March 20, 1995 in Book 119 at Page 70, Reception No. 95-26206 in the Arapahoe County real property records, and as may be further amended from time to time. The Common Interest Community shall be known as Orchard Drive and shall be a planned community as defined by the Act.
- D. "Common Lot Fence" shall mean and refer to any fence (other than a Perimeter Fence): (i) which separates two or more Lots and each side of which adjoins one or more Lots, (ii) which separates one or more Lots from portions of the Common Elements and on one side adjoins one or more Lots and on the other side adjoins portions of the Common Elements, or (iii) which separates one or more Lots from a public street, a public right-of-way, or from property outside of the Common Interest Community and on one side adjoins one or more Lots and on the other side adjoins a public street, a public right-of-way, or property outside of the Common Interest Community.
- E. "Common Lot Fence Owner" shall mean and refer to any owner of a Lot whose Lot adjoins a Common Lot Fence.
- F. "Declarant" shall mean and refer to Lone Wolf Ventures LLC, a Colorado limited liability

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company, its successors and assigns, if such successors and assigns are specifically assigned any of the Declarant's rights hereunder by instrument duly recorded in the Arapahoe County, Colorado, land records.

G. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

H. "Dwelling" shall have the same meaning as "Residence."

I. "Executive Board" shall mean and refer to the governing body of the Association.

J. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of Arapahoe, Colorado, encumbering any Lot having priority of record over all other recorded liens except those liens made superior by statute. "First Mortgage" shall also mean and refer to any executory land sales contract having the aforesaid priority wherein the Administrator of Veterans' Affairs, an officer of the United States of America, is identified as the seller, whether such contract is recorded or not and whether such contract is owned by the said Administrator or has been assigned by the said Administrator and is owned by the Administrator's assignee or by a remote assignee concerning which executory land sales contract the records of the office of the Clerk and Recorder of the County of Arapahoe, Colorado, show the said Administrator as having the record title to the Lot subject to such Executory Land Sales Contract. "First Mortgage" shall not include a judgment lien, mechanics' lien, tax lien, or other similar involuntary lien or encumbrance upon a Lot.

K. "First Mortgages" shall mean and refer to any person named as a mortgage or beneficiary under any First Mortgage or any successor to the interest of any such person under such First Mortgage.

L. "Lot" shall mean and refer to Lots 1 through 6, inclusive, Orchard Drive Filing No.2, as shown on the Plat. The number of Lots in the Common Interest Community is 6. Declarant reserves no rights to create additional Lots. The identification number and boundaries of each Lot are as shown on the Plat. For the purposes of the Act, the term "Lot" shall have the same meaning as the term "Unit" as defined by the Act.

M. "Member" shall mean and refer to each Owner of a Lot; membership in the Association shall be appurtenant to, and may not be separated from, ownership of the Lot.

N. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Common Interest Community, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

O. "Perimeter Fence" shall mean and refer to any fence which separates portions of the Common Elements, or any one or more Lots from a public street, a public right-of-way, or from property outside of the Common Interest Community, and on one side adjoins portions of the Common Elements or one or more Lots, and on the other side adjoins a public street, a public right-of-way, or property outside of the Common Interest Community.

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P. "Plot" shall mean and refer to the plot thereof recorded January 10, 1995 in Book 117, at Page 73, Reception No. 95-032935 in the Alameda County real property records, as amended by that certain administrative replat entitled Orchard Drive, Triling No. 2, recorded March 20, 1995 in Book 119 at Page 50, Reception No. 95-26206 in the Alameda County real property records, as same may be amended from time to time.

Q. "Residence" shall mean and refer to any single family detached dwelling located within the Common Interest Community.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION; POWERS OF ASSOCIATION

Section 1. *Membership.* Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. *Classes of Membership.* The Association shall have one class of voting membership. Members shall be all Owners of Lots, including Declarant. Each Member shall be entitled to one vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Section 3. *Reservation.* Notwithstanding the foregoing voting rights, Declarant hereby reserves the right to appoint the officers and members of the Executive Board for the maximum period permitted by the Act. Members of the Executive board shall serve for such terms of office as are set forth in the Articles of Incorporation and Bylaws of the Association. This reserved right shall terminate upon the first to occur of the following events:

- a. sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than Declarant; or
- b. (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business.

Section 4. *Surrender of Right to Appoint.* Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of Declarant control, but, in that event, Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Section 5. *Composition of Executive Board.* Notwithstanding the provisions of Article II, Section 2, not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Owners other than Declarant; not later than sixty (60) days

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after conveyance of fifty percent (50%) of the Lots to Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Executive Board shall be elected by Owners other than Declarant.

Section 6. *Removal of Member of Executive Board.* The Members, by two-thirds (2/3) vote at any meeting of the Members at which a quorum is present, may remove any member appointed by Declarant. Declarant may remove any member of the Executive Board and any officer of the Association appointed by Declarant.

Section 7. *Association Powers.* The Association shall have all the rights and powers accorded a unit owners association under the Act and such additional rights and powers as are herein designated or as may be necessary and proper to manage the business and affairs of the Association. The Association may assign its future income only upon approval by majority vote of the Members at a meeting duly called for that purpose.

ARTICLE III

PROPERTY RIGHTS IN THE COMMON ELEMENTS

Section 1. *Owner's Easements and Rights of Enjoyment.* Subject to the provisions hereinafter set forth in this Article III, every Owner of the Association shall have a non-exclusive right and easement of enjoyment in and to the Common Elements and the improvements located thereon, which easement shall be appurtenant to and shall pass with the title to every Lot within the Common Interest Community.

Section 2. *Title to Common Elements.* Declarant may retain the legal title to any portion or all of the Common Interest Community to be conveyed to the Association and to be designated as Common Elements until such time as it has completed improvements thereon and until such time as in the opinion of Declarant the Association is able to maintain the same, but, notwithstanding the foregoing, Declarant hereby covenants that it shall convey all of its interest in and to the Common Elements to the Association not later than thirty (30) days after the termination of its reserved rights as stated in Article II, Section 3, hereof.

Section 3. *Extent of Owner's Rights and Easements.* The rights and easements of enjoyment created hereby shall be subject to the rights of the Association and Declarant pursuant to this Declaration and the Act, and to the notes, covenants, and other conditions set forth in the Plat.

Section 4. *Extension of Rights and Benefits.* Subject to rules and regulations promulgated by the Executive Board, every Member of the Association shall have the right to extend the rights and easements of enjoyment vested in such Member under this Article to each of such Member's tenants, guests, household employees and to each family member who resides with such Member of the Association within the Common Interest Community and to such other persons as may be permitted by the Association.

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ARTICLE IV.

SPECIAL DECLARANT RIGHTS

Section 1. *Reservation of Rights.* Declarant reserves the following rights:

- a. The right to complete or make improvements indicated on the Plat, or permitted by this Declaration or any development plan approved by the County of Arapahoe, Colorado;
- b. The right to maintain a sales office and up to six (6) model or "spec" homes on Lots or in Residences, and the right to relocate same to any Lot or Residence located within the Common Interest Community;
- c. The right to maintain signs within the Common Interest Community to advertise the Common Interest Community or Lots or Residences located therein;
- d. The right to use and to permit others to use easements through the Common Elements as may be reasonably necessary for the purpose of discharging and exercising Declarant's obligations and rights under the Act and this Declaration;
- e. The right to appoint or remove any officer of the Association or member of the Executive Board as set forth in Article II of this reservation; and
- f. The right to exercise any other right or privilege accorded a declarant pursuant to the Act or accorded Declarant under this Declaration.

Section 2. *Limitation on Reserved Rights.* Unless sooner terminated by a recorded instrument signed by Declarant, any right reserved in this Article IV may be exercised by Declarant with respect to any portion of the Common Interest Community for the maximum period of time specified by the Act.

ARTICLE V.

COVENANTS FOR MAINTENANCE AND ASSESSMENT

Section 1. *Creation of the Lien and Personal Obligation for Assessments.* Each Owner of any Lot within the Common Interest Community, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed therein, or by acceptance of any other conveyance thereof (except a conveyance in connection with the establishment of a mortgage) shall be deemed to covenant and agree to pay to the Association: (1) annual assessments; (2) special assessments for capital improvements or maintenance thereof; (3) special assessments in connection with an Owner's failure to perform the required exterior maintenance or improvement of his property; (4) special assessments to provide for costs incurred by virtue of unforeseen emergencies; and (5) such other assessments as may be permitted by the Act. The annual assessments or charges may, at the discretion of the Executive Board, include a reserve for: future capital improvements to the Common Elements; replacement of and repairs to the

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improvements located on the Common Elements. All assessments herein provided for shall be assessed by the Association. The annual assessment shall be levied on an annual basis, and a special assessment may be levied from time to time when and as determined by the Association. All the assessments described above, together with such interest thereon, reasonable attorneys' fees and costs of collection thereof, as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made, subject to foreclosure in accordance with applicable law. Each such assessment, together with interest, late charges, reasonable attorneys' fees and costs of collection thereof shall also be the personal obligation of the person or persons who are the Owner(s) of such property at the time when the assessment falls due, and in the event that there is more than one Owner thereof, such obligation shall be joint and several. The lien for each unpaid assessment shall be attached to each Lot at the beginning of each assessment period and shall continue to be a lien against such Lot until paid. The recordation of this Declaration constitutes record notice and perfection of the lien rights granted hereunder. No further recordation of any claim of lien for assessments is required. Notwithstanding, in the event the Association desires to file a notice of such lien, the costs and expenses for filing any notice of lien shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Association's lien on each lot for assessments shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Section 2. Purpose of and Use of Annual Assessments or Charges. The annual assessments or charges levied under this Article V as provided for in Section 1 above shall be used exclusively for the purposes of promoting the recreation, health, safety and welfare of the residents of the Common Interest Community, including, without limitation: (1) for the acquisition of improvements to and maintenance of the Common Elements (including, but not limited to, the payment of taxes and insurance thereof, and the repair, replacement and additions thereof, the cost of labor, equipment, and materials relating thereto, and management and supervision thereof); and (2) for the provision of services to the Owners or the Association as determined by the Association, including by way of example only, but not limited to, garbage and trash collection, landscaping, horticultural maintenance, security services and for such other needs of the Association and Owners as may arise, including a reasonable provision for contingencies and replacements. It shall be the obligation of the Association to at all times keep all of the Common Elements in good condition and to properly maintain the same.

Section 3. Maximum Annual Assessment. Until commencement of the second annual assessment period, the maximum annual assessment shall be Three Hundred Dollars (\$300.00) per Lot. ~~300.00~~

- a. Effective with commencement of the second and each subsequent annual assessment period, the maximum annual assessment may be increased effective each annual assessment year in conformance with the rise, if any, of the Consumer Price Index published by the U. S. Department of Labor, Washington, D.C., for All Items and Major Group Figures for All Urban Consumers (1967=100), for the one-year period ending with the preceding month of December or in an amount ten (10%) percent greater than the previous annual assessment, whichever is greater. In the event the aforesaid Consumer Price Index is not published, for whatever reason, then the increase in the maximum

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annual assessment, as provided herein, shall be calculated by using a substantially comparable index designated by the Executive Board of the Association.

- b. Effective with the commencement of the second and each subsequent annual assessment period, the maximum annual assessment may be increased above that established by the Consumer Price Index formula for the next succeeding annual assessment year and at the end of each such annual assessment period, for each succeeding annual assessment year, provided that any such increase shall have the assent of two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of such meeting setting forth the purpose therefor.
- c. At any time and from time to time, the Executive Board may, after consideration of the projected maintenance costs and other financial needs of the Association, and upon written notification to each Owner of the amount of the actual assessment to be levied, fix the actual assessment per each Lot at an amount less than the maximum.
- d. The Association shall maintain an adequate reserve fund out of the annual assessments for the maintenance, repair and replacement of those elements or portions of the Common Elements that must be maintained, repaired or replaced on a periodic basis.

Section 4. Special Assessments for Capital Improvements and Emergencies. In addition to the annual assessments described above, in any assessment year the Association may levy a special assessment, applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction or reconstruction; any unexpected repair or replacement of a described capital improvement upon the Common Elements, including the necessary fixtures and personal property related thereto; and any construction or reconstruction, unexpected repair or replacement, including land rehabilitation and restoration, due to any emergencies.

Section 5. Capital Contributions for Improvements, Repairs and Replacements. In addition to the annual or special assessments described above, the Association may levy in any assessment year, either as part of the annual assessment or the special assessment, an amount to be set aside as a reserve for future capital expenditures, including major repairs to or replacements of improvements located on the Common Elements or for the future construction of improvements on the Common Elements. Any funds so collected shall be designated by the Executive Board as capital contributions to the Association by the members thereof and shall be segregated and placed in a separate bank account of the Association to be utilized solely for the purposes aforesaid.

Section 6. Special Assessments for Failure to Properly Maintain a Lot or Misconduct of Unit Owner. In the event that the Owner of any Lot shall fail to maintain the premises and the improvements situated thereon in the manner required by this Declaration, the Association shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the same and the exterior of the buildings and any other improvements erected thereon in the manner contemplated by the above provisions. The cost of such exterior maintenance shall thereupon be added to and become part

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of the annual assessments to which such Lot is subject and shall likewise be a lien on such Lot, which assessment may be collected as provided in this Article V. If any common expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Lot.

Section 7. Budget and Payment. Within thirty (30) days after adoption of any proposed budget for the Common Interest Community, the Executive Board shall mail by ordinary first class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget, not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting the budget is rejected by majority vote of the Members, the budget shall be deemed ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The annual assessment shall be due and payable in installments at such times as the Executive Board may determine. An amount equivalent to three monthly assessments shall be deposited with the Association at the time of the first conveyance of any Lot from the Declarant to any purchaser thereof, which deposit shall not bear interest and may be retained by the Association as working capital and as security for the payment of annual and special assessments. Separate due dates may be established by the Executive Board for special assessments, as defined herein, provided that at least thirty (30) days prior written notice shall be provided to the Owners of such due dates.

Section 8. Effect of Non-Payment of Assessments and Personal Liability of Owner. If an assessment is not paid on the date when due (being the date specified in Section 8 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof, as hereinafter provided, thereupon become a continuing lien on the property of the Owner, his heirs, devisees, personal representatives, successors and assigns. Such lien, pursuant to Section 316(3) of the Act, shall be deemed perfected without the requirement of the recording of a notice of lien or other evidence of delinquency. In addition to the lien rights, it shall be the personal obligation of the then Owner to pay such assessment and such personal obligation shall continue even though the Owner's interest in the property shall be transferred.

If the assessment is not paid within ten (10) days after the due date, the assessment shall bear interest from the due date at the rate of twenty-one percent (21%) per annum (or the maximum rate permitted by law, whichever is less), and the Association may bring legal action against the Owner personally obligated to pay the same, or foreclose the lien against the property and there shall be added to the amount of such assessment all costs incurred by the Association in foreclosing the lien or in collecting the amount owing, including any reasonable attorneys' fees.

Section 9. Rate of Assessment. Except as provided in Section 7 of this Article V, or otherwise specifically set forth in this Article V, the total annual and special assessments levied and assessed by the Association shall be allocated to each Lot uniformly on the basis of a fractional portion of such total assessments allocated to each Lot being a fraction, the numerator of which is one and the denominator of which is the total number of Lots within the Common Interest Community.

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ARTICLE VI.

APPROVAL OF PLANS

Section 1. *Architectural Review Committee.*

- a. There is hereby established an Architectural Review Committee consisting of three (3) members. The Architectural Review Committee shall be appointed by the Executive Board of the Association and may include as members the officers, directors or employees of Declarant. The vote of a majority of the members shall constitute the action of the Architectural Review Committee. The Architectural Review Committee shall have the right to employ consultants to assist in the performance of its functions hereunder. All expenses of the Architectural Review Committee shall be paid by the Association.
- b. No dwelling or other improvements shall be constructed, erected, placed, altered, maintained or permitted on any Lot or on the Common Elements, nor shall any construction or excavation whatsoever be commenced or materials, equipment or construction vehicles be placed on any Lot owned by any person or entity other than Declarant until plans and specifications with respect thereto (in manner and form satisfactory to the Architectural Review Committee showing the proposed improvements, plot layout and all exterior elevations, materials and colors, landscaping, grading, easements and utilities, and such other information as may be requested by the said Committee) have been submitted to and been approved in writing by the Architectural Review Committee. Such plans and specifications shall be submitted in writing and be signed by the Owner or the Owner's authorized agent.
- c. Approval shall be based, among other things, on: suitability of exterior design, colors and materials, relation of the proposed improvements to the natural topography, grade and finished ground elevation; relation of the structure to that of neighboring structures and natural features of the Common Interest Community; and conformity of the plans and specifications to the purpose and general plan and intent of these restrictions. The Architectural Review Committee shall have the right to require and approve landscaping plans. The Architectural Review Committee shall not arbitrarily or unreasonably withhold its approval of such plans and specifications.
- d. If the Architectural Review Committee fails either to approve or to disapprove such plans and specifications (including resubmission of disapproved plans and specifications which have been revised) within Sixty (60) days after the same have been submitted to it (provided that all required information has been submitted), it shall be conclusively presumed that said plans and specifications have been approved subject, however, to the restrictions contained in Article IX hereof. The Architectural Review Committee shall notify the Owner in writing upon receipt of all required plans and specifications and the aforesaid 60-day

- period shall commence on the date of such notification.
- e. Any failure by the Architectural Review Committee to approve or disapprove any construction, improvement or alteration of any Lot or Common Element by the Owner or the Owner's authorized agent, which was not properly submitted to the Architectural Review Committee as provided by this Article, shall not be deemed to be an approval of the construction, improvement or alteration. The Architectural Review Committee shall retain its right to approve or disapprove the construction, improvement or alteration as provided in this Article. The Architectural Review Committee shall have one-hundred twenty (120) days from the date it first discovers any construction, improvement or alteration on any Lot or Common Element, the plans of which were not properly submitted, to approve or disapprove said construction, improvement or alteration. If the Architectural Review Committee disapproves any construction, improvement or alteration, the Owner shall have ten (10) days after receipt of notification of disapproval to remove said construction, improvement or alteration. Removal shall be at the sole expense of the Owner. The Owner shall comply with the decision of the Architectural Review Committee and shall take any action required by the Architectural Review Committee for approval.
- f. Neither the Architectural Review Committee, nor Declarant, nor their respective successors or assigns, shall be liable in damages to anyone submitting plans to the Architectural Review Committee for approval, or to any owner affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and specifications. Every owner or other person who submits plans to the Architectural Review Committee for approval agrees, by submission of such plans and specifications, that he will not bring any action or suit against the Architectural Review Committee or Declarant to recover any such damages. Approval by the Architectural Review Committee shall not be deemed to constitute compliance with the requirements of any local building codes, and it shall be the responsibility of the Owner or other person submitting plans to the Architectural Review Committee to comply therewith. Additionally, it is solely the responsibility of the Owner to ensure that proper draining of the Lot is maintained and that any construction, improvement or alteration have no adverse effect on draining on any Lot within the Common Interest Community.

Section 2. *Development by Declarant.* The provisions of Section 1 of this Article VI shall not apply to Declarant's development of the Common Interest Community or to its or construction of Residences or improvements within the Common Interest Community.

ARTICLE VII.

ENFORCEMENT

Section 1. *Abatement and Suits.* In the event of any violation or breach of the provisions

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of the Declaration, the Association in its own behalf, or in behalf of the Owners shall have the right; (1) to enter upon the portion of the Common Interest Community wherein said violation or breach exists and summarily to abate and remove, at the expense of the Owner in violation, any structure, thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof; (2) to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of the provisions herein to enjoin or prevent them from doing so; (3) to cause said violation to be remedied or to recover damages for said violation; and (4) to impose a monetary penalty on the offending Owner of \$50.00 per day that the violation remains extant after ten (10) days' notice to said Owner.

Section 2. Deemed to Constitute a Nuisance. Every violation of this Declaration or any part thereof is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed therefor by law or equity against an Owner shall be applicable against every such violation.

In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the reasonable attorneys' fees of the prevailing party or parties in the amount as may be fixed by the Court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

Failure to enforce any of the provisions of this Declaration herein contained shall in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other provisions thereof, and the above-named entities shall not be liable therefor.

Section 3. Rules and Regulations. The Association shall have the right to promulgate and adopt reasonable rules and regulations to carry out the purpose and intent of the protective covenants set forth in Article IX hereof and the other provisions of this Declaration. The Architectural Review Committee shall have the right to adopt architectural standards, sign standards, construction regulations and other such rules and regulations as it deems necessary or appropriate. All such rules, regulations and standards may be modified from time to time in the reasonable discretion of the Association or the Architectural Review Committee.

ARTICLE VIII

INSURANCE

Section 1. Insurance on Common Elements. The Association shall maintain insurance covering all insurable improvements located or constructed upon the Common Elements. The Association shall maintain the following types of insurance to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance.

- a. A policy of property insurance covering all Common Elements and property that must become a Common Element, with a "Replacement Cost Endorsement" providing that any claim shall be settled on a full replacement cost basis without deduction for depreciation. Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:

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- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and
 - (2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard all risk endorsement, where such is available. The deductible for such insurance shall not exceed Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the face amount of the policy, whichever is less, and the Association shall include sufficient funds to cover such deductibles in its operating reserve account.
- b. A comprehensive policy of general liability insurance covering all of the Common Elements, insuring the Association in an amount not less than One Million Dollars (\$1,000,000) covering bodily injury, including death of persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of their insurers for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, legal liability arising out of the lawsuits related to employment contracts of the Association, if any; such coverage may also include, if applicable, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.
- c. A policy providing adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association. Such fidelity coverage or bonds shall meet the following requirements:
- (1) all such fidelity coverage or bonds will name the Association as an obligee;
 - (2) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.
- d. If the Common Elements or any portion thereof is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on the Common Elements has been made available under the National Flood Insurance Program, then such a policy of flood insurance on the Common Elements in an amount at least equal to the lesser of:
- (1) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within the designated flood hazard area; or

(2) A policy covering errors and omissions of officers and directors of the Association, in such amounts and containing such provisions as may from time to time be deemed necessary or desirable by the Executive Board of the Association.

c. In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect Executive Board members and officers of the Association from personal liability in relation to their duties and responsibilities in acting as Executive Board members and officers on behalf of the Association.

All such policies of insurance shall contain waivers of subrogation and waiver of any defense based on invalidity arising from any acts of a Member of the Association and shall provide that the policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the insured, as well as to the First Mortgagees of each Lot. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any First Mortgagee of a Lot, upon written request. The insurance shall be carried in blanket forms naming the Association as the insured, as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any such Owner's membership in the Association.

Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are common expenses. First Mortgagees shall have the right, jointly or severally, to pay all overdue premiums on any hazard insurance policy or to secure new hazard insurance coverage upon the lapse of such policy for the Common Elements, and any such First Mortgagee making such payment shall be owed immediate reimbursement therefor from the Association.

Section 2. *Damage to Common Elements.* In the event of damage to or destruction of all or a portion of the Common Elements due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Elements damage or destruction are insufficient to repair and reconstruct the damage or destruction, the Association shall cause such Common Elements to be promptly repaired and reconstructed, using the insurance proceeds and the proceeds of a special assessment which, notwithstanding the provisions of Article V, Section 4 to the contrary, may be levied without a vote of the Members. The amount of such assessment shall be equal to the amount by which the cost of repair or reconstruction exceeds the sum of the insurance proceeds available and shall be assessed equally for each Lot. The assessment provided for herein shall be a debt of each Owner and a lien on such Owner's Lot, and the improvements thereon, and shall be enforced and collected as provided in Article V hereof.

Section 3. *Association Insurance as Primary Coverage.* If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance.

Section 4. Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Executive Board of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association.

ARTICLE IX

PROTECTIVE COVENANTS

The Common Interest Community is, and shall be, held, transferred, sold, conveyed, leased and occupied subject to the protective covenants, conditions and restrictions set forth in this Article IX, all of which shall run with the land; *provided, however*, that in the event of any conflict between the requirements of this Article IX and the requirements of any applicable zoning code or ordinance, the more restrictive of the two shall govern.

Section 1. Lots.

2. Permitted Uses.

- (1) The owner of any Lot shall not suffer or permit any noxious or offensive activity to be conducted, carried on or practiced thereon or within any dwelling or accessory building constructed thereon or otherwise use or employ such Lot site and improvements for any purpose that will constitute an annoyance to the neighborhood or a nuisance as provided by law, or that will detract from the residential value, reasonable enjoyment and quality of the Common Interest Community.
- (2) No portion of any improvement shall be occupied as living quarters prior to the substantial completion of the construction of the entire dwelling as evidenced by a temporary or final certificate of occupancy ("CO") therefor. All buildings must be fully completed with the CO issued within one (1) year following the commencement of work thereon. No structure or a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. However, anything herein to the contrary notwithstanding, temporary facilities may be constructed for purposes of housing sales and construction personnel with regard to the sale and construction of Lots and Residences within the Common Interest Community as long as said temporary facilities conform to applicable law and receive prior written approval from the Architectural Review Committee.
- (3) No oil, drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted

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upon or in any Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or within any Lot. No derrick or other structure designed for use in boring for oil, natural or other minerals shall be erected, maintained or permitted upon any Lot. No Lot Owner shall be permitted to drill a well intended for the extraction of water from the ground, nor construct a septic or sewage disposal system on any Lot without prior approval of the Architectural Review Committee. Declarant shall install or cause to have installed water distribution and sewer collection lines to a point proximate to the property line of each Lot or in the roads adjacent thereto, and connection by the Lot Owner to the facilities shall be mandatory.

- (4) A Lot shall be used exclusively and solely for residential purposes (except as provided in Subsection 1(a)(2) of this Article IX). Each primary dwelling constructed on a Lot shall be comprised of a minimum of two thousand, eight hundred (2800) square feet, and shall be constructed as a single story "ranch style" dwelling with such minimum square footage to be exclusive of any garages, patio, basements or accessory buildings. The Architectural Review Committee shall have the right to modify the minimum square foot requirements of Article IX, Section 1(a)(4) for good cause shown. Each primary dwelling constructed on a Lot shall otherwise comply with the minimum setback requirements of this Declaration and the zoning codes or ordinances of Arapahoe County, Colorado.
- (5) In order to preserve the natural quality and aesthetic appearance of the Common Interest Community, all homes shall be constructed primarily of stone, stucco or wood, and fencing or plantings simulating fencing shall be discouraged on any Lot or Lot line (except for dog runs) and may be permitted only after approval of the Architectural Review Committee of the color, material and design thereof in accordance with the procedures set forth in Article V hereof to insure that such fencing or planting will be in keeping with the character of the Common Interest Community. The Architectural Review Committee shall have the right to prohibit fencing on any corner Lot and shall have the right to adopt uniform fencing standards for the Common Interest Community. Security fencing in connection with any swimming pool and fences utilized in connection with any tennis court or recreation facilities must likewise have the prior approval of the Architectural Review Committee as above-described.
- (6) Clothes line or equipment intended for children's recreational use, such as swing sets and slides, shall be placed within the Lot in such a manner as to be reasonably screened from view from

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roads, the Common Elements or other Lots, whether by fencing or other screening approved by the Architectural Review Committee. The location of such equipment on a Lot shall also require prior approval of the Architectural Review Committee, which shall have the right to waive or vary the screening requirement if the equipment is placed on a Lot in such a manner as to minimize the exposure thereof.

- (7) No exterior antenna or similar improvement such as a satellite dish shall be permitted on any Lot which is visible from neighboring Lots, the Common Elements or roads.
- (8) No elevated tanks or appurtenances of any kind shall be erected, placed or permitted upon any part of a Lot. Any tank used in connection with any dwelling and any type of refrigeration or heating apparatus must be located underground or concealed by appropriate fencing or screening to be approved by the Architectural Review Committee.
- (9) No basketball hoop or backboard shall be installed upon or attached to any dwelling or improvement except in a manner as to be reasonably screened from view from roads, Common Elements, and other Lots. The location of said basketball hoop or backboard shall require prior approval of the Architectural Review Committee.
- (10) All electric, telephone, television, radio and other utility lines shall be placed underground when extended from the street or Lot line to any dwelling or other improvement on a Lot.
- (11) No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of dwellings and other improvements located thereon or essential to the function of community services, and except wind chimes which cannot be heard of a neighboring Lot, shall be placed or used on any Lot or on the Common Elements.
- (12) All vacant Lots shall be maintained in a clean condition with all weeds and grass thereon periodically trimmed with such Common Interest Community free at all times of trash and rubbish.
- (13) No light shall be emitted from any Lot or dwelling or recreational facility which is unreasonably bright or causes an unreasonable nuisance or glare to or on any other Lot or neighboring property. Tennis court lighting is hereby expressly prohibited.

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- (14) No reflective glass windows shall be utilized in any improvements constructed on the Common Interest Community.
- (15) No solar panels shall be utilized in any improvements constructed on the Common Interest Community.
- (16) Any and all roofing materials utilized for improvements within the Common Interest Community shall be restricted to shake 50-year asphalt singles, or such other materials as may be approved by the Architectural Review Committee, *provided, however*, that wood shake shingled roofs are expressly prohibited, and that metal roofs will only be permitted for small decorative portions of a roof, such as that located over a bay window.

b. *Special Lot Restrictions.*

- (1) *Height and Setback.* All dwellings and improvements of any kind will be set back from the boundaries of the Lot as provided by the setback limitations set forth in the zoning code of Arapahoe County, Colorado, and the final development plan for the Common Interest Community, but in no event shall said setback from the front lot line be less than fifteen (15) feet for all elements of front elevation except garage doors, which shall be a minimum of eighteen (18) feet if door is parallel to the street; a garage door perpendicular to the street (side entry) may be fifteen (15) feet as long as the center line distance of the driveway is at least eighteen (18) feet from the street line of any platted street, five (5) feet from any other Lot boundary line, and a minimum of fifteen (15) feet from any boundary line for all elements of rear elevation. All dwellings and improvements of any kind located on corner Lots shall be set back no less than ten (10) feet from the boundary line on each side of the property. A minimum separation between buildings shall be between ten (10) and twenty (20) feet. Minimum building separation shall be measured from a building's foundation in a manner perpendicular to each opposing building wall. A twenty (20) foot minimum building separation shall be required for all dwellings and improvements. Building features and appurtenances shall be permitted to protrude into building setbacks so long as the minimum building separation of ten (10) to twenty (20) feet is maintained. All side yards shall be a minimum of five (5) feet. No dwelling or portion thereof (including eaves and overhangs) shall ever encroach upon any adjacent street, nor shall any dwelling encroach upon any utility or drainage easement provided for in this Declaration. Further, no dwelling and no other structure or above-ground improvement on a Lot shall

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exceed an average height of (25) feet; *provided, however*, that chimneys may be built to a reasonable height in excess of twenty-five (25) feet. In the event that a variance is requested from Arapahoe County, Colorado, of any of the aforesaid setback or height limitations, a like variance must also be obtained from the Architectural Review Committee before such improvements maybe constructed on a Lot.

(2) *Restrictions on Double Frontage Lots.* The Architectural Review Committee shall have the right to designate the direction in which a dwelling shall face if constructed on a double frontage Lot and shall determine the location of all curb cuts for driveways.

(3) *Fencing Requirements.* The Declarant intends to construct Perimeter Fences along the northerly, westerly and easterly boundaries of the Common Interest Community. Additional fencing shall be subject to the following:

(a) If the Owner of any Lot desires to install a Common Lot Fence, said Owner shall be required to install a fence of substantially the same type, design and style as the Perimeter Fence. Any such fence must be approved by the Architectural Review Committee prior to installation.

(b) Each Owner shall be responsible for the maintenance and upkeep of any fence erected by said Owner.

(4) *General.* The restrictions and limitations set forth in this Article XI are in addition to but not in lieu of the other restrictions and limitations contained in the Declaration and in any applicable zoning code or ordinance. In the event of any inconsistency or conflict between the provisions hereof and the provisions of any applicable zoning code or ordinance, the more restrictive provisions shall govern. To the extent that no inconsistency or conflict with any applicable zoning code or ordinance is created, the restrictions set forth in this Article XI may be varied or waived by the Architectural Review Committee at its discretion upon good cause shown.

c. *Pets.* No domestic animals or fowl totaling more than three (3) generally recognized house or yard pets shall be allowed outside of the residence of any Lot. If an Owner chooses to keep house or yard pets, said Owner shall at all times have them under his or her control, whether within the Owner's Lot or in any other location within the Common Interest Community. Animals shall not be permitted to roam at will, and at the option of the Association, steps may be taken to control any animals not under the immediate control of their Owners.

including the right to impound animals not under such control and charge substantial fees to their Owner for their return. The Association shall have the right to adopt further rules and regulations to enforce this provision.

d. *Horses and Livestock.* No horses or livestock shall be kept or otherwise maintained within Lots.

e. *Landscaping and Maintenance.*

- (1) Lot Owners are encouraged to landscape their Lots, using indigenous species. The Architectural Review Committee shall retain the right to require that trees or shrubs on a Lot be located or trimmed so as to preserve or enhance the view from other Lots within the immediate vicinity. Water sprinkler systems with underground pipes shall be required to be installed at each Lot Owner's expense for the watering of non-indigenous plants that require supplemental watering to maintain them in a thriving growing condition.
- (2) No Lot shall be used or maintained as a dumping ground for rubbish. No garbage or trash or other waste shall be placed anywhere other than in covered sanitary containers which shall be maintained in good and clean conditions and to the extent possible must be screened from view from roads, the Common Elements or other Lots by plantings, fences or in such other manner as approved by the Architectural Review Committee. No waste shall be burned upon any Lot. All garbage and trash collection and disposal shall be in strict compliance with the rules of the Association.
- (3) No exterior fires shall be permitted except for barbecue fires contained within receptacles designed for that use. No coal or other type fuel which gives off smoke, excepting wood and charcoal, shall be used for heating, cooking or any other purpose within a Lot.
- (4) A Lot and all improvements thereon shall be maintained at all times by the Owner in good condition and repair. The Owner shall cause all dwellings and other improvements to be refinished, resurfaced or repainted periodically as effect of damage, deterioration or weather becomes apparent. Appearance, color, type of painting or stain or other exterior conditions shall not be changed without prior approval of Architectural Review Committee. The appropriate repairs and replacements shall be made as often as necessary. Unsightly conditions shall constitute a nuisance as defined in Article VII herein.

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- (5) At the time of or as soon as reasonably possible following construction of a Residence on a Lot but not later than the latter of seven (7) months or one (1) growing season after substantial completion of the dwelling, the Lot shall be suitably landscaped with grass, shrubs and trees. Thereafter, all grass, shrubs and trees shall be kept and maintained in an attractive, healthy, live and growing condition, and all dead or diseased grass areas, shrubs and trees shall be promptly removed and replaced with suitable replacement landscaping. Each Lot Owner shall maintain the landscaping upon his Lot in good condition. An owner shall remove weeds promptly and water and trim lawns and shrubs as often as the same shall become necessary, and otherwise remove waste materials from his Lot, whether said Lot is vacant or improved.
- (6) The Association shall be responsible for repairing, maintaining, and replacing Perimeter Fences and the costs thereof shall be a part of the annual assessments levied by the Association.
- (7) The costs of repairing, maintaining, and replacing Common Lot Fences shall be the responsibility of the Common Lot Fence Owners who make use of such Fence in proportion to the length of each such Owner's Lot line abutting such fence. If any Common Lot Fence Owner fails to comply with such Owner's duties and obligations under this section, the Association, upon its own initiative or upon the request of the Architectural Review Committee, shall have the right (after giving 30 days' prior written notice to such Common Lot Fence Owner and such Owner's failure to take such action as is reasonably deemed necessary) to repair, maintain, or replace any such Common Lot Fence. The costs of such action by the Association shall be added to and become part of the assessment to which such Lot is subject.

2. *Automobile, Boat and Camper Parking.*

- (1) Trucks, trailers, mobile homes, truck campers, boats and commercial vehicles shall not be kept, placed or maintained upon any Lot, road, street, driveway or on the Common Elements in such a manner that such vehicle or boat is visible from neighboring Lots, Common Elements or roads. The provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained during and used exclusively in connection with the construction of any dwelling or other improvement permitted by this Declaration. Commercial vehicles engaged in the delivery or pick-up of goods or services

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shall be exempted from the provisions of this paragraph providing that they do not remain within a Lot in excess of the reasonable period of time required to perform such commercial function.

- (2) Each dwelling shall include at least two completely enclosed and two outside parking spaces within the Lot.
- (3) No trailer, vehicle or boat shall be constructed, reconstructed or repaired upon any Lot in such a manner that such activity is visible from neighboring Lots, Common Elements or roads.

E. *Signs.* No signs whatsoever shall be permitted within any Lot, with the exception of those listed below:

- (1) Signs required by legal proceedings.
- (2) Signs of the type usually used by contractors, subcontractors and tradesmen may be erected during the authorized time of construction; provided that such signs are the style, color and material approved by the Architectural Review Committee and do not exceed a total face area of six (6) square feet.
- (3) Residential identification signs shall be constructed of materials which are compatible with the architecture of the area, and these shall be subject to the approval of the Architectural Review Committee prior to erection thereof.
- (4) For Sale signs and large community marketing signs on vacant Lots or for homes under construction must be of the style, color and materials approved by the Architectural Review Committee. With reference to For Sale or For Rent signs for residential resales, the same may be erected upon a Lot, provided that no more than one sign is erected and that such sign does not exceed a total face area of six (6) square feet unless otherwise approved in advance in writing by the Architectural Review Committee.
- (5) No sign shall exceed a height of eight (8) feet from grade.
- (6) The Architectural Review Committee shall have the right to promulgate standards for color, style, materials and location of the foregoing signs (except signs required by legal proceedings) and in such event, all signs shall conform therewith.

h. *Drainage Easements.* A non-exclusive drainage easement eight (8) feet in width for storm water drainage purposes is hereby excepted and reserved on the boundaries of all Lots for storm water drainage purposes. Said easement shall be landscaped by the owner of the Lot on which the easement is located, but no

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improvement may be constructed thereon other than landscaping improvement; and all such landscaping improvements shall require the prior approval of the Architectural Review Committee. No Owner shall modify the grade or landscaping of such easement once constructed without the prior written approval of the Architectural Review Committee. No fences or any other permanent structures, including landscaping which prohibits the flow of storm water runoff, will be permitted within any drainage easement.

- i. *Show Homes.* No Owner or other person, except Declarant, its successors and assigns, may utilize any Lot or dwelling constructed thereon for the purposes of a show home without the consent of Declarant being first obtained. The term "show home" shall mean and refer to a home used for the purposes of sale of similar homes constructed or to be constructed in residential developments other than the Common Interest Community or other homes within the Common Interest Community.
- j. *Commercial Use.* No business building, machine shop or other industrial or commercial structure or building devoted to commercial or public enterprises shall be erected or used on any Lot, and no business which attracts any customers or clients to a Lot shall be conducted or carried on or be practiced upon any Lot or within any dwelling or accessory building constructed thereon, except that buildings may be erected and used by Declarant, its successors, assigns or designees for use in developing and marketing the Common Interest Community.
- k. *Easements.* Easements for the installation, repair, maintenance and replacements of utilities, television cables and/or drainage facilities over and across portions of the Lots are reserved as shown on the Plat. Within these easements, no improvements, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation, repair, maintenance and replacement of any utilities or cables or which may change the direction of flow or obstruct or retard the flow of water through any drainage channels located in the easements or through drainage channels stemming from said easements. Notwithstanding the foregoing, all easement areas located on each Lot and all improvements constructed thereon shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

Section 2. *Subdivision and Combining of Lots.* No Lot may be divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership, except that adjoining Lot Owners may sell or purchase adjoining property to accomplish relocation of the boundary line between such Lots if first approved in writing by the Architectural Review Committee, if such sale and purchase will not cause a resulting violation of any setback, building or other restriction contained herein, and if such steps are taken as are necessary to comply with the building and zoning and subdivision codes for the County of Arapahoe. In such cases, the new boundary line thus established shall be deemed a new boundary line between the respective Lots but no setback line or easement established with respect to the former boundary line shall be shifted or changed by reason of the change of boundary line. Two (2) or more adjoining Lots which are under the same ownership may also be combined and developed as one

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(1) Lot, but only if first approved in writing by the Architectural Review Committee and if such approvals as may be necessary are obtained from the County of Arapahoe. Setback lines along the common boundary line of the combined parcels shall be deemed removed and easements created or established along the common boundary line of the combined Lots may be changed without the consent of any person entitled to the use thereof if no improvements have been constructed in such easements provided that the written consent of the Architectural Review Committee be first obtained. The Architectural Review Committee shall have the right to require alternative easements to be granted or created by the Owner of the combined Lots. If setback lines are removed or easements are changed along the common boundary line of the combined Lots, the combined Lots shall thereafter be deemed one (1) Lot, and may not thereafter be split or developed into two (2) or more Lots. Further, in the event that two (2) or more adjoining Lots are combined hereunder, they shall be deemed one (1) Lot for the purpose of voting rights pursuant to Article II and assessments pursuant to Article V hereof.

Section 3. Common Elements.

- a. No noxious or offensive activity shall be carried on at any of the Common Elements, nor shall anything be done or placed therein which may be or become a nuisance or cause unreasonable embarrassment, disturbance or annoyance to Owners in the enjoyment of their Lots or the Common Elements.
- b. All uses of the Common Elements shall be subject to rules and regulations of the Association as promulgated and revised by the Executive Board thereof from time to time.
- c. No improvement, excavation or other alteration shall be made so as to alter the Common Elements from its natural or existing state at the time of conveyance by Declarant to the Association unless approved in advance by the Architectural Review Committee or the Declarant.
- d. Areas within the Common Elements to be utilized for recreational facilities may be so developed by either Declarant or the Association subject only to prior approval of the Architectural Review Committee.
- e. Uses of the undeveloped and unimproved Common Elements shall be limited to those activities which do not materially injure or scar the Common Elements or the vegetation thereon, substantially increase the cost of maintenance thereof, or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of their Lots or the Common Elements unless sanctioned or approved by the Architectural Review Committee.
- f. There shall be no camping or picnicking in the Common Elements except in those areas specifically designated by the Association for that purpose.
- g. There shall be no fires started or maintained in the Common Elements, except fires started by the Association or its employees incidental to the maintenance of the Common Elements and except for cooking and campfires in those areas designated for that use and in recreational facilities in which the same shall expressly be permitted.
- h. No domestic animals shall be permitted on the Common Elements except

generally recognized house or yard pets accompanied by and under the control of their Owners, and Owners shall be responsible for removing said pet's excrement from the Common Elements. Animals shall not be allowed to roam at will on the Common Elements; and, at the option of Declarant and/or the Association, steps may be taken to control any animals not under the immediate control of their Owners, including the right to impound animals not under such control and charge substantial fees to the Owners for their return. Further, the Association shall have the right to assess any Owner who does not remove his pet's excrement from the Common Elements for the cost of such removal, but in no event less than Twenty-five (\$25.00). Such assessment shall be a lien on the responsible Owner's Lot. Declarant and the Association shall have the right to adopt further rules and regulations to enforce such provisions.

- i. The use of snowmobiles, motorcycles or other motorized vehicles off the roadways is expressly prohibited within the Common Elements except as required for emergency and maintenance purposes.
- j. Use of bicycles shall be limited to the roads and bike trails provided for their use.

ARTICLE X

EASEMENTS

Section 1. Maintenance Easement. An easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Common Elements and a right to make such use of the Common Elements, as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

Section 2. Utilities. There is hereby created a blanket easement upon, across, over and under the Common Elements, for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity and master, cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, repair, and maintain water and sewer pipes, gas, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements, without conflicting with the terms hereof; provided, however, that such right and authority shall cease and determine upon conveyance by Declarant of the last Lot to the first Owner thereof (other than Declarant). The easement provided for in this Section 2 shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

Section 3. Rights of Declarant Incident to Construction. An easement is hereby retained by and granted to Declarant for access, ingress, and egress over, in, upon, under and across the Common Elements, for the temporary storage thereon by Declarant or Declarant's designees of construction

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material, dirt, and similar items, and for the temporary storage thereon by Declarant or Declarant's designee of construction material, dirt, and similar items, and for the temporary placement thereon of construction trailers and equipment by Declarant or Declarant's designee as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Declarant's rights, whether arising under Colorado law or reserved in this Declaration, or for the purpose of construction of Residences, sales offices, management offices, and other improvements or structures by Declarant or Declarant's designee.

Section 4. Easements Deemed Created. All conveyances of Lots hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article X, even though no specific reference to such easements or to this Article X appears in the instrument for such conveyance.

ARTICLE XI

FIRST MORTGAGEES

Section 1. Member and First Mortgagee Approval. Notwithstanding anything to the contrary set forth elsewhere in this Declaration, the Association shall not, unless it has obtained the prior written consent of at least seventy-five percent (75%) of the Members and ninety percent (90%) of the First Mortgagees of Lots:

- a. by act or omission, change, waive, or abandon any scheme of architectural control, or enforcement thereof, as set forth in this Declaration, regarding the design or maintenance of the Common Elements;
- b. fail to maintain full current replacement cost fire and extended insurance coverage on the Common Elements;
- c. use hazard insurance proceeds for Common Elements property losses for purposes other than to repair, replace, or reconstruct such property;
- d. by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer any property owned, directly or indirectly, by the Association for the benefit of the Owners (excluding the granting of permits, licenses and easements for public utilities, roads or other purposes consistent with the intended use of such property and reasonably necessary or useful for the proper maintenance or operation of the Common Interest Community or the Association);
- e. change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;
- f. add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association which establish, provide for, govern or regulate any of the following, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only:

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- (1) voting rights;
 - (2) assessments or assessment liens;
 - (3) reserves for maintenance, repair and replacement of those elements of the Common Elements which must be maintained, repaired or replaced on a periodic basis;
 - (4) insurance, including, but not limited to, fidelity bonds;
 - (5) rights to use of the Common Elements;
 - (6) responsibility for maintenance and repair of any portion of the Common Elements;
 - (7) boundaries of any Lot;
 - (8) interests in the Common Elements;
 - (9) convertibility of Lots in Common Elements or of Common Elements into Lots;
 - (10) leasing of Residences;
 - (11) imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer or otherwise convey his Lot;
 - (12) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages; or
- g. terminate professional management and assume self-management of the Association when professional management has previously been required by a First Mortgagee or insurer or guarantor of such a First Mortgage;
 - h. terminate the legal status of the Common Interest Community, provided that this subsection (h) shall not apply to amendments to this Declaration, the Articles of Incorporation or Bylaws of the association made as a result of destruction, damage or condemnation of the Common Interest Community or improvements thereon;
 - i. restore or repair the Common Interest Community, or any portion thereof, including, but not limited to, improvements located thereon, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration and the most recent plans and specifications for the Common Interest Community and the construction of improvements thereon;

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Section 2. *Notice of Action.* Upon written request to the Association, identifying the name and address of the first Mortgagee or insurer or guarantor of the First Mortgage and the Residence address of the property which is subject to such First Mortgage, each such First Mortgagee or insurer or guarantor of a First Mortgage shall be entitled to timely written notice of:

- a. any condemnation loss or casualty loss which affects a material portion of the Common Elements;
- b. any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor, or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or Bylaws of the Association and the Board of Directors of the Association has actual knowledge of such default, when such delinquency and or default remains uncured for a period of sixty (60) days;
- c. any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- d. any proposed action which would require the consent of a specified percentage of First Mortgagees as provided in this Article XI.

Section 3. *Financial Statement.* The Association shall provide a financial statement for the immediately preceding fiscal year, free of charge to the party so requesting, to any First Mortgagee, or any insurer or guarantor of a First Mortgage, within a reasonable time after written request therefor by any such party.

ARTICLE XII

GENERAL PROVISIONS

Section 1. *Determination of Allocated Interests.* The allocated interests (as defined by the Act) designated herein have been calculated in accordance with the following formulas:

- a. The number of votes in the Association on the basis of one vote per Lot.
- b. The proportionate liability of each Lot for annual and special assessments on the basis of a fraction, the numerator of which is one and the denominator of which is the total number of Lots within the Common Interest Community.

Section 2. *Conflicts of Provisions.* In case any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

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Section 3. Condemnation. In the event proceedings are initiated by any government or agency thereof seeking to take by eminent domain the Common Elements, any material part thereof or any interest therein, any improvement thereon, or any material interest therein, the Association shall give prompt notice thereof, including the description of the part of or interest in the Common Elements or improvement thereon sought to be so condemned, to all First Mortgagees of Lots, all insurers and guarantors of First Mortgages, all Members, and to the Declarant. The Association shall have full power and authority to defend in said proceedings, and, if practicable, to represent the Owners in any negotiations, settlements and agreements with a condemning authority for acquisition of the Common Elements or part thereof as the attorney-in-fact for the Owners (the Owners, by their acceptance of a deed or other instrument of conveyance, hereby constituting and appointing the Association their attorney-in-fact for such purposes), but the Association shall not enter into any such proceedings, settlement or agreements pursuant to which the Common Elements or any part thereof or any interest therein is relinquished, without giving all First Mortgagees of Lots, all Members and Declarants at least fifteen (15) days prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part of or all of the Common Elements, the award made for such taking, if such award is sufficient to repair and restore the Common Elements, shall be applied by the Association to such repair and restoration. If such award is insufficient to repair and restore the Common Elements or if the full amount of such award is not expended to repair and restore the Common Elements, the Association shall disburse the net proceeds of such award to the Owners with each Lot being allocated an equal portion of such proceeds, provided that the Association unpaid liens or encumbrances. No provision of this Declaration or of any other document relating to the Common Interest Community shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee pursuant to a First Mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation award for losses to or taking of Common Elements.

Section 4. No Representations. Except as expressly set forth herein, Declarant makes no representations regarding use of the Common Interest Community and the restrictions placed thereon by these covenants, by the County of Arapahoe, or by other governmental authorities. Declarant makes no representations as to the existence, preservation or permanence of any view from any Lot. Further, nothing contained herein shall be construed to constitute an obligation of Declarant to complete the development of all of the Lots covered by this Declaration or any assurance that Declarant will develop any other properties other than as specifically set forth in this Declaration.

Section 5. Duration and Amendment.

- a. This Declaration, every provision hereof and every covenant, condition, restriction and reservation contained herein shall run with and bind the Common Interest Community and shall continue in full force and effect for a period of twenty (20) years from the date hereof, and shall thereafter be automatically extended for successive periods of ten (10) years unless otherwise terminated or modified or hereinafter provided.
- b. The Declaration or any provision hereof, may not be terminated, extended, modified or amended, as to the whole of the Common Interest Community or any

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portion thereof, without the written consent of a majority of the Members of the Association, if any, at the time of such termination, extension, modification or amendment. A written notice of any proposed termination, extension, modification or amendment shall be sent by registered mail to every Member of the Association at least sixty (60) days in advance of any action taken. If no response to the written notice is received by the Association, approval by the non-responding proposed member of termination, extension, modification or amendment shall be conclusively presumed. Such termination, extension, modification or amendment shall be immediately effective after such written notice has been given upon recording a written instrument in the office of the Clerk and recorder of Arapahoe County, Colorado, reflecting that the required consents have been obtained, which instrument is executed and acknowledged by the President or Vice President of the Association.

c. Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any lending institutions, then subject to the following sentence of this Section, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees of Lots. Each such amendment of this Declaration or of the Articles or Incorporation or Bylaws shall be made, if at all, by Declarant prior to termination of the Declarant's reserved right to appoint the Executive Board of the Association as provided in Article II, Section 3 hereof.

d. Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, and Articles of Incorporation or Bylaws of the Association, at any time prior to the termination of the Declarant's reserved right to appoint the Executive Board of the Association for the purposes of correcting spelling, grammar, dates or as is otherwise necessary to clarify the meaning of the provisions of this Declaration.

Section 6. Registration by Owner of Mailing Address. Each Owner and First Mortgagee of a Lot and each insurer or guarantor of a First Mortgage shall register his mailing address with the Association, and, except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands, or other notices intended to be served upon the Executive Board of the Association or the Association shall be sent by certified mail, postage prepaid, c/o Surgical Associated Services, Inc., 6825 East Tennessee Avenue, Suite 407, Denver, Colorado 80224, until such address is changed by the Association.

Section 7. Severability. All of the provisions contained in this Declaration shall be construed together, but if it shall at any time be held that any one of such provisions, or any part thereof, is or has become invalid, or for any reason is or has become unenforceable, no other provision, or any part thereof, shall be thereby affected or impaired.

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Section 8. *Benefits and Burdens.* The terms and provisions contained in this Declaration shall bind and inure to the benefit of the Declarant, the Association and the Owners located within the Common-area Interest Community and their respective heirs, successors, personal representatives and assigns.

Section 9. *Waiver.* The failure of any person or entity designated herein to enforce any provision of this Declaration shall in no event be deemed to be a waiver of the right to do so for any subsequent violations. Moreover, the right to enforce any other provisions of this Declaration shall not be waived by such a failure, nor shall there be any liability therefor.

Section 10. *Singular and Plural.* Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

Section 11. *Dedication of Common Elements.* Declarant in recording this Declaration, has designated certain areas of land as Common Elements for the common use and enjoyment of Owners for recreation and other related activities. The Common Elements are not dedicated hereby for use by the general public but are dedicated to the common use and enjoyment of the Owners, as more fully provided in this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal on this day and year first above written.

DECLARANT:

LOVE WOLF VENTURES, LLC, a Colorado limited liability company

By: Robert M. Taylor
Robert M. Taylor, its Managing Member

STATE OF COLORADO)

COUNTY OF)

St.

The foregoing instrument was acknowledged before me in the County of Denver, State of Colorado this 24 day of February, 1998 by Robert M. Taylor, the Managing Member of Love Wolf Ventures, LLC, a Colorado limited liability company

Witness my hand and official seal.

NOTARY PUBLIC
December 8, 2000

My commission expires: _____

Robert M. Taylor
Notary Public

**BYLAWS
OF
ORCHARD DRIVE HOMEOWNERS ASSOCIATION, INC.**

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**BYLAWS
OF
ORCHARD DRIVE HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I
GENERAL**

Section 1.1. Name. The name of the corporation is Orchard Drive Homeowners Association, Inc. It is a Colorado nonprofit corporation (the "Association").

Section 1.2. Purpose of Bylaws. The purpose for which the Association is formed is to govern the Lots, exercise the rights, power and authority, and fulfill the duties of the Association as provided in the Declaration of Covenants, Conditions and Restrictions for Orchard Drive and any amendments and supplements thereto, recorded in the office of the Clerk and Recorder of Arapahoe County, Colorado ("Declaration"), and the Association's Articles of Incorporation, and any amendments thereto, filed with the Colorado Secretary of State ("Articles of Incorporation"), and these Bylaws. The Declaration, Articles of Incorporation, Bylaws, and any rules, regulations, policies or guidelines are hereafter collectively referred to as the "Association Documents." All Members and any other Person who may use the Lots, or any portion thereof, or any facilities or appurtenances thereto or thereon shall be subject in all respects to the covenants, conditions, restrictions, reservations, easements, regulations, and all other terms and provisions set forth in the Association Documents. The mere acquisition, rental or occupancy of any Lot, or any portion thereof, shall signify that all terms and provisions of the Association Documents are accepted and shall be complied with.

Section 1.3. Terms Defined in Declaration. Terms which are defined in the Declaration shall have the same meanings in these Bylaws unless such terms are otherwise defined in these Bylaws.

Section 1.4. Controlling Laws and Instruments. These Bylaws are controlled by and shall always be consistent with the provisions of the Colorado Common Interest Ownership Act, (hereafter the "Act"), the Colorado Revised Nonprofit Corporation Act (the "Nonprofit Act"), the Declaration and the Articles of Incorporation, as any of the foregoing may be amended or supplemented from time to time. In the event of a conflict in the terms of the Declaration and the Articles of Incorporation, the Declaration shall control. In the event of a conflict in the terms of the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control. Statutory provisions referenced in these Bylaws, and effective as of the date these Bylaws were approved, are included as an appendix.

**ARTICLE II
OFFICES**

Section 2.1. Principal Office. The principal office of the corporation shall be as determined by the Board of Directors ("Board"), but meetings of Members and directors may be held at such places within the State of Colorado as may from time to time be designated by the Board.

Section 2.2. Registered Office and Agent. The Nonprofit Act requires that the Association have and continuously maintain in the State of Colorado a registered office and a registered agent who resides in the State of Colorado and whose business office is identical with such registered office. The registered office need not be the same as the principal office of the Association. The initial registered

office and the initial registered agent are specified in the Articles of Incorporation of the Association, but may be changed by the Association at any time, without amendment to the Articles of Incorporation, by filing a statement as specified by law in the office of the Secretary of State of Colorado.

Section 2.3. Registration with Colorado Division of Real Estate. The Association shall register annually with the Colorado Division of Real Estate in the manner required by the Act.

ARTICLE III MEMBERS

Section 3.1. Members. A "Member" of the Association is each Owner of a Lot. The Association shall have one class of Members.

Section 3.2. Memberships Appurtenant to Lots. Each Membership shall be appurtenant to the fee simple title to a Lot. The Members which have fee simple title to a Lot shall automatically be the holder of the Membership, and the Membership shall automatically pass with fee simple title to the Lot. No Member may resign his, her or its Membership without the conveyance of fee simple title to the Lot.

Section 3.3. Member Votes. The Owners of each Lot shall be entitled to one vote for each Lot owned.

Section 3.4. Voting by Joint Members. If there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the persons holding such interest shall determine between themselves, provided that in no event shall more than one vote be cast with respect to any Lot. If, however, the Owners of a Lot are unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and their right to vote on such issue shall be lost. The vote of an entity Member may be cast by any authorized or apparent representative of the entity in the absence of express notice of the designation of a specific person by the governing body of such entity.

Section 3.5. Resolution of Voting Disputes. In the event of any dispute as to the entitlement of any Member to vote or as to the results of any vote of Members at a meeting, the Board shall act as arbitrators and the decision of a disinterested majority of the Board shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon in accordance with the Colorado Uniform Arbitration Act of 1975, as amended.

Section 3.6. Suspension of Membership Privileges. The Board may suspend, after notice and hearing as provided herein, the Membership privileges, including voting rights, of a Member during and for up to 60 days following any violation by such Member or the Member's tenants, guests, or invitees, of any provision of the Declaration or of any rule or regulation adopted by the Association unless such violation is a continuing violation, in which case such suspension may continue for so long as such violation continues and for up to 60 days thereafter. Notwithstanding the foregoing, no notice or hearing is required to suspend a Member's Membership privileges if such Member is not in good standing. A Member who has defaulted on any obligations, including payment of assessments, to the Association is not in good standing.

Section 3.7. Transfer of Memberships on Association Books. Transfers of Memberships shall be made on the books of the Association only upon presentation of evidence, satisfactory to the

Association, of the transfer of ownership of the Lot to which the Membership is appurtenant. Prior to presentation of such evidence, the Association may treat the previous owner of the Membership as the owner of the Membership entitled to all rights in connection therewith, including the right to vote and to receive notices.

ARTICLE IV MEETINGS OF MEMBERS

Section 4.1. Place of Member Meetings. Meetings of Members shall be held at the principal office of the Association or at such other place as may be fixed by the Board from time to time and specified in the notice of the meeting.

Section 4.2. Annual Meetings of Members. Each annual meeting of the Members shall be held on a date and at a time selected by the Board in each year. At each annual meeting, the Members shall elect directors to officer positions to fill vacancies in accordance with the provisions of the Declaration, the Articles of Incorporation and these Bylaws, and conduct such other business as may properly come before the meeting.

Section 4.3. Special Meetings of Members. Special meetings of the Members may be called by the President or a majority of the directors and shall be called by the President at the request of Members to whom not less than 20% of the total votes in the Association are allocated.

Section 4.4. Notice of Meetings. Written notice of each meeting of the Members shall be given to each Member entitled to vote at such meeting by, or at the direction of, the Secretary of the Association or person authorized to call the meeting, not less than 10 nor more than 50 days before the date of the meeting. The Association shall give notice of meetings to Members by hand delivery, by United States mail, or by electronic transmission if authorized by the Member. The notice of any meeting must state the date, time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration, the Articles of Incorporation, or these Bylaws, any budget changes, and any proposal to remove an officer or a director. Notice shall be physically posted in a conspicuous place to the extent that such posting is feasible and practicable. Such physical posting is in addition to any electronic posting or electronic mail notices that the Board may provide. If mailed, such notice shall be deemed to have been delivered when deposited in the United States mail addressed to the Member at the address of his, her or its Lot or to any other mailing address designated in writing by the Member, with postage thereon prepaid; if delivered electronically, such notice shall be deemed to have been delivered on the date sent; if hand delivered, such notice shall be deemed to have been delivered on the date of actual delivery.

Section 4.5. Record Date. For the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or in order to make a determination of such Members for any other proper purpose, the Board may fix, in advance, a date as the record date for any such determination of Members. The record date shall be not more than 50 days prior to the meeting of Members or the event requiring a determination of Members.

Section 4.6. Proxies. A Member entitled to vote may vote in person or by proxy executed in writing by the Member or his, her or its duly authorized attorney-in-fact and filed with the Secretary of the Association prior to the time the proxy is exercised. A Member may appoint a proxy by signing an

appointment form, either personally or by the Member's attorney-in-fact. A Member may appoint a proxy by transmitting or authorizing the transmission of a facsimile or other electronic transmission providing a written statement of the appointment to the proxy, to the Association's manager, Secretary, or other person duly authorized by the proxy to receive appointments for the Association; except that the transmitted appointment shall set forth or be transmitted with written evidence from which it can be determined that the Member transmitted or authorized the transmission of the appointment. A proxy shall automatically cease upon the conveyance of the Member's Lot and the transfer of the Membership on the books of the Association. A proxy is only valid for the meeting specified and any adjournment of that meeting. A proxy is void if it is not dated or if it purports to be revocable without notice. Appointment of a proxy is revoked by the person appointing the proxy: (a) attending the meeting and voting in person; or (b) signing and delivering to the Secretary or the Association's manager either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form. A proxy shall not be valid if obtained through fraud or misrepresentation.

Section 4.7. Quorum at Member Meetings. Except as otherwise provided in the Declaration, the Articles of Incorporation or these Bylaws, a quorum is deemed present if persons entitled to cast 50% of the votes of Members are present, in person or by proxy, at the beginning of the meeting. A quorum of Members who are present in person or by proxy at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum present.

Section 4.8. Recess of Member Meetings. Members present in person or by proxy at any meeting may recess the meeting from time to time, whether or not a quorum is present, without notice other than announcement at the meeting, for a total period or periods not to exceed 30 days after the date set for the original meeting.

Section 4.9. Vote Required at Member Meetings. At any Members' meeting, if a quorum is present, in person or by proxy, a majority of the votes present in person or by proxy and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater percentage is required by law, the Declaration, the Articles of Incorporation or these Bylaws; except that in the case of elections in which there are more candidates than positions to be filled, the person (or persons if there is more than one position to be filled) receiving the highest number of votes cast shall be elected. Votes for contested positions on the Board shall be taken by secret ballot. At the discretion of the Board or upon the request of 20% of the Members who are present at the meeting or represented by proxy, a vote on any matter affecting the Association on which all Members are entitled to vote shall be by secret ballot. Ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be Members or Member representatives who are selected or appointed at an open meeting, in a fair manner, by the chair of the Board or another person presiding during that portion of the meeting. The volunteers shall not be Board members and, in the case of a contested election for a Board position, shall not be candidates. The results of a vote taken by secret ballot shall be reported without reference to names, addresses, or other identifying information of Members participating in the vote. No Member is entitled to vote who is not in Good Standing.

Section 4.10. Acceptance or Rejection of Vote, Consent, Ballot, Waiver or Proxy.

a. The Association is entitled to reject a vote, consent, written ballot, waiver, proxy appointment or proxy appointment revocation if the Secretary of the Association, or other officer or agent

authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the Member.

b. The Association and its officer or agent who accepts or rejects a vote, consent, written ballot, waiver, proxy appointment or proxy appointment revocation in good faith and in accordance with the standards of this Section 4.10 are not liable in damages for the consequences of the acceptance or rejection.

c. Any action of the Association based on the acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment or proxy appointment revocation under this Section 4.10 is valid unless a court of competent jurisdiction determines otherwise.

Section 4.11. Member Participation at Meetings. All meetings of the Association and Board are open to every Member, or to any person designated by a Member in writing as the Member's representative, and Members or designated representatives so desiring shall be permitted to attend, listen, and speak at an appropriate time during the deliberations and proceedings; except that, at regular and special meetings of the Board, Members who are not directors may not participate in any deliberation or discussion unless expressly so authorized by a vote of the majority of a quorum of the directors. The Board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a Member or a Member's designated representative to speak before the Board takes formal action on an item under discussion, in addition to any other opportunities to speak. The Board shall provide for a reasonable number of persons to speak on each side of an issue. Upon the final resolution of any matter for which the Board received legal advice or that concerned pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information, as it deems appropriate, about such matter in an open meeting.

Section 4.12. Cumulative Voting Not Permitted. Cumulative voting by Members is not permitted.

Section 4.13. Order of Business. The order of business at any meeting of Members shall be as follows: (a) proof of notice of meeting or waiver of notice; (b) announcement of a quorum; (c) approval of minutes of preceding meeting; (d) voting with respect to budgets adopted by the Board, if applicable at such meeting; (e) election of directors (at annual meetings or special meetings held for such purpose); and (f) other business.

Section 4.14. Expenses of Meetings. The Association shall bear the expenses of all meetings of Members, including photocopies, postage, and other expenses determined by the Board as necessary to conduct the meeting.

Section 4.15. Action of Members Without a Meeting. Any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting if consent, in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof. All such writings must be received by the Association within 60 days after the date the earliest dated writing describing and consenting to the action is received by the Association. Any such writing may be received by the Association by electronically transmitted facsimile or other form of wire or wireless communication providing the Association with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section shall be effective when the last writing

necessary to effect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date.

Section 4.16. Action by Written Ballot. Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve each matter other than election of directors; (c) specify the time by which a ballot must be received by the Association in order to be counted; and (d) be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter. In the event the action is for election of directors, there shall be space on the ballot for write in nominations. Action taken under this section has the same effect as action taken at a meeting of Members and may be described as such in any document. Electronic voting and casting of ballots shall be deemed to satisfy the requirements of a writing so long as the requirements of this Section 4.16 are otherwise met. The use of electronic mail for voting purposes is expressly disallowed for contested elections of directors and any other case where a secret ballot is required.

ARTICLE V EXECUTIVE BOARD

Section 5.1. General Powers and Duties of Executive Board. The Board shall have the duty to manage and supervise the affairs of the Association and shall have all powers necessary or desirable to permit it to do so. Without limiting the generality of the foregoing, the Board shall have the power to exercise or cause to be exercised all of the powers, rights and authority not reserved to Members in the Declaration, the Articles of Incorporation, these Bylaws, the Act or the Nonprofit Act. The Board's authority with respect to the Common Elements is exclusive. No Member or other person shall attempt to engage or direct any employee of the Association or its Manager on any private business of such person, or to otherwise direct, supervise or in any manner attempt to assert control over such employee during the hours that such employee is working on behalf of the Association.

Section 5.2. Qualifications of Directors. A director shall be a natural person who is 18 years of age or older and must be a Member or, if the Member is a limited liability company, partnership, corporation, trust or other type of entity, then a director must be an authorized agent of such entity. If a director conveys or transfers title to his or her Lot, then such director's term shall immediately terminate and a new director shall be selected as promptly as possible to take such director's place. No two directors shall be members from the same household. No Member may serve as a director if such Member is not in Good Standing with the Association. Any Member, or person who is related by blood, marriage, adoption, or who is a member, manager, shareholder, director, officer, agent, or employee of a Member, who is an adverse party to the Association in any legal proceeding or action shall not be qualified to serve as a director for the duration of the proceeding. If a Member is not qualified to serve as a director, the director's position shall be deemed vacant, and the vacancy may be filled in accordance with Section 5.7 of these Bylaws.

Section 5.3. Number of Directors. The number of directors of the Association shall be three. The number of directors may be increased or decreased from time to time by amendment to these Bylaws and the Articles of Incorporation, provided that the number of directors shall not be less than three and no decrease in number shall have the effect of shortening the term of any incumbent director.

Section 5.4. Term of Office of Directors. Directors shall serve for terms of three years. At the first annual meeting of the Association held subsequent to adoption of these Bylaws, the Members shall elect one director to a term of one year, one director to a term of two years, and one director to a term of three years, and at each annual meeting thereafter the Members shall elect the same number of directors as there are directors whose terms are expiring at the time of each election, for terms of three years. Each director shall serve until his or her successor is duly elected and qualified or until such director resigns or is removed from office as provided in these Bylaws.

Section 5.5. Nomination. Nomination for election to the Board may be made by a nominating committee if such a committee is appointed, from time to time, by the Board, or in such other manner as determined by the Board. Nominations may also be made from the floor at any Member meeting unless election of directors is by written ballot in lieu of a meeting.

Section 5.6. Election. Directors shall be elected to serve for specific officer positions. Contested elections for directors shall be by secret written ballot. At such election the Members may cast, in respect to each vacancy, one vote for each Lot owned. The person receiving the largest number of votes shall be elected.

Section 5.7. Removal of Directors: Vacancies of Directors. If notice of a meeting states that one of the purposes of the meeting is to remove a director, 67% of the votes cast at such meeting of the Members at which a quorum is present, in person or by proxy, may remove any director with or without cause. In the event of death, resignation or removal of a director, his or her successor shall be selected by a majority of the remaining directors, whether or not such remaining directors constitute a quorum, and shall serve for the unexpired term of the director being replaced. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his or her predecessor in office.

Section 5.8. Resignation of Directors. Any director may resign at any time by giving written notice to the President, to the Secretary or to the Board stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

Section 5.9. Committees. The Board, by resolution adopted by a majority of the directors in office, may designate and appoint one or more other committees, which may consist of or include Members who are not directors. Any such committee shall have and may exercise such authority as shall be specified in the resolution creating such committee, except that no such committee shall exercise any of the authority prohibited by C.R.S. 7-128-206. The Board shall have the right, from time to time and at any time, to add, remove or replace committee members.

Section 5.10. General Provisions Applicable to Committees. The appointment of any committee and the delegation thereto of authority shall not relieve the Board of any responsibility imposed upon it by law.

Section 5.11. Compensation. No director shall receive compensation from the Association for serving on the Board. However, any director may be reimbursed for actual expenses incurred in the performance of the director's duties.

Section 5.12. Loyalty. All directors are encouraged to share their views and opinions. Directors may vote in the minority on issues, however, once an issue is decided, each director agrees to work within the Association's processes and systems to advance the approved issue, and not to intentionally sabotage or subvert the work of the Board or the issue decided upon whether individually or in collaboration with others.

ARTICLE VI MEETINGS OF DIRECTORS

Section 6.1. Place of Director Meetings. Meetings of the Board shall be held at the principal office of the Association or at such other place as may be fixed from time to time by the Board and specified in the notice of the meeting.

Section 6.2. Regular Meetings of Directors. The Board shall hold regular meetings at least quarterly and may establish in advance by resolution the times and places for regular meetings. No prior notice of any regular meetings need be given after establishment of the times and places thereof by resolution.

Section 6.3. Special Meetings of Directors. Special meetings of the Board may be called at any time by the President or any two directors, upon not less than two days' notice to each director.

Section 6.4. Open Meetings. All regular and special meetings of the Board, or any committee thereof, shall be open to attendance by all Members or to any person designated by a Member in writing. At an appropriate time determined by the Board, but before the Board votes on an issue under discussion, Members or their designated representatives shall be permitted to speak regarding that issue. The Board may place reasonable time restrictions on persons speaking during the meeting. If more than one person desires to address an issue and there are opposing views, the Board shall provide for a reasonable number of persons to speak on each side of the issue. Notwithstanding the foregoing, the Board or a committee thereof may hold an executive or closed door session and may restrict attendance to directors and other persons specified by the Board; provided that any such executive or closed door session may only be held in accordance with the provisions and requirements of the Act, as amended from time to time, or other applicable law. The matters to be discussed at such an executive session shall include only the following matters: (a) matters pertaining to employees of the association or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the association; (b) consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client; (c) investigative proceedings concerning possible or actual criminal misconduct; (d) matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure; (e) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy; and (f) review of or discussion relating to any written or oral communication from legal counsel. Prior to the time the directors or any committee thereof convene in executive session, the chair of the body shall announce the general matter of discussion as enumerated in subparagraphs (a) to (f) above.

Section 6.5. Proxies. A director shall not be entitled to vote by proxy at any meeting of directors.

Section 6.6. Quorum of Directors. A majority of the number of directors fixed in these Bylaws in office immediately before the meeting begins shall constitute a quorum for the transaction of business.

Section 6.7. Vote Required at Director Meetings. At any meeting of directors, if a quorum is present, a majority of the votes present in person and entitled to be cast on a matter shall be necessary for the adoption of any matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation or these Bylaws.

Section 6.8. Order of Business. The order of business at all meetings of directors shall be as determined by the Board, and in the absence of such a determination, shall be as follows: (a) proof of notice of meeting or waiver of notice; (b) approval of minutes of preceding meetings; (c) reports of officers; (d) reports of committees; (e) unfinished business; and (f) new business.

Section 6.9. Officers at Meetings. The President shall act as chairman and the Secretary shall act as secretary at all meetings of the Members and the Board.

Section 6.10. Waiver of Notice. A waiver of notice of any meeting of the Board, signed by a director, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such director.

Section 6.11. Action of Directors Without a Meeting.

a. Any action required to be taken or which may be taken at a meeting of directors may be taken without a meeting if a notice stating the action to be taken and the time by which a director must respond is transmitted in writing to each director and each director, by the time stated in the notice, either: (i) votes in writing for such action; or (ii) votes in writing against such action, abstains in writing from voting, or fails to respond or vote and fails to demand that action not be taken without a meeting.

b. The notice required by this section shall state: (i) the action to be taken; (ii) the time by which a director must respond; (iii) that failure to respond by the time stated in the notice will have the same effect as abstaining in writing by the time stated in the notice and failing to demand in writing by the time stated in the notice that action not be taken without a meeting; and (iv) any other matters the Association determines to include.

c. Action is taken under this section only if, at the end of the time stated in the notice: (i) the affirmative votes in writing for such action and not revoked as hereafter provided equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the directors then in office were present and voted; and (ii) a director has not made a written demand that such action not be taken without a meeting other than a demand that has been revoked pursuant to this section.

d. A director's right to demand that action not be taken without a meeting shall be deemed to have been waived unless the director makes a demand in writing by the time stated in the notice and such demand has not been revoked as provided in this section.

e. Any director who in writing has voted, abstained, or demanded action not be taken without a meeting pursuant to this section may revoke such vote, abstention, or demand in writing received by the Association by the time stated in the notice.

f. Unless the notice states a different effective date, action taken pursuant to this section shall be effective at the end of the time stated in the notice.

g. A writing by a director under this section shall be in a form sufficient to inform the Association of the identity of the director, the vote, abstention, demand, or revocation of the director, and the proposed action to which such vote, abstention, demand, or revocation relates. All communications under this section may be transmitted or received by the Association by electronically transmitted facsimile, e-mail, or other form of wire or wireless communication. For purposes of this section, communications are not effective until received.

h. Action taken pursuant to this section has the same effect as action taken at a meeting of directors and may be described as such in any document. All writings made pursuant to this section shall be filed with the minutes of the meetings of the Board.

Section 6.12. Participation by Electronic Means. The Board may permit any director to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

ARTICLE VII POWERS AND DUTIES OF THE BOARD

Section 7.1. Powers. The Board shall have the power to:

a. Adopt and publish rules, regulations, policies and guidelines, including architectural or design guidelines governing the Lots, the Common Elements, the Community, or any portion thereof, and any improvements or facilities thereon and the personal conduct of the Members and their tenants, guests, and invitees thereon, and to establish penalties for the infraction thereof;

b. Suspend the voting rights and the right of a Member or tenant, guest or invitee to use Common Elements, after notice and hearing as provided herein, for up to 60 days following any infraction by such Member or a tenant, guest, or invitee of any provision of the Declaration or of any rule, regulation, policy or guideline adopted by the Association unless such infraction is a continuing infraction, in which case such suspension may continue for so long as such infraction continues and for up to 60 days thereafter;

c. Enter into, make, perform or enforce contracts, licenses, leases and agreements of every kind and description;

d. Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not expressly reserved to the Membership by other provisions of these Bylaws, the Articles of Incorporation, the Declaration, the Act or the Nonprofit Act;

e. Declare the office of a director to be vacant in the event such member shall be absent from two regular meetings of the Board during any one year period or in the event a director is not qualified to be a director under the provisions of Section 5.2 above; and

f. Employ a manager, an independent contractor, or such other employees as they deem necessary, and prescribe their duties.

Section 7.2. Duties. It shall be the duty of the Board to:

a. Supervise all officers, agents, and employees of the Association, and see that their duties are properly performed;

b. As more fully provided in the Declaration, to determine the amount of the annual assessment against each Lot, from time to time, in accordance with the Association budget, and revise the amount of the annual assessment if such budget is rejected by the Members, and take action to collect any delinquent assessment, including foreclosing the lien against any Lot for which assessments are not paid, or bring an action at law against the Member personally obligated to pay the same;

c. Issue, or cause an appropriate officer or authorized agent to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates;

d. Procure and maintain insurance, as more fully provided in the Declaration;

e. Provide for maintenance, repair and reconstruction of the Common Elements, other parcels of real property, and improvements located thereon owned by the Association or in which the Association has a possessory interest, including obtaining insurance certificates for reasonable insurance coverage from all contractors, as more fully provided in the Declaration;

f. Keep financial records sufficiently detailed to enable the Association to comply with the requirement that it prove statements of unpaid assessments. All financial and other records shall be made reasonably available for examination and copying by any Member and such Member's authorized agents;

g. Invest Association funds subject to any investment policy the Board may adopt which reflects the basic investment objectives of diversity, safety, liquidity and income return;

h. At the discretion of the Board or upon request by the Members to whom at least three of the votes in the Association are allocated, obtain an audit of the books and records of the Association, using generally accepted auditing standards, by an independent certified public account. The audit shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting. Copies of an audit or review shall be made available upon request to any Member beginning no later than thirty days after its completion.

- i. Adopt responsible governance policies required under C.R.S. 38-33.3-209.5.

Any of the aforesaid duties (except as specified in Section 7.2(h)) may be delegated by the Board to any other person(s) or to a manager for the Association. To the extent it may be required by any statute, and if not required by statute then at the option of the Board, the Association or the manager or other person who receives the delegation of duties relating to the collection, deposit, transfer or disbursement of Association funds shall: (i) maintain fidelity insurance or a bond in an amount not less than the greater of (a) \$50,000 or such higher amount as the Board may require or (b) the estimated maximum amount of funds, including reserve funds, in the custody of the manager at any given time during the term of each policy as calculated from the current budget of the Association, or (c) a sum equal to three months' aggregate assessments plus reserve funds; and (ii) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the manager or other person(s) and maintain all reserve accounts separate from operational accounts of the Association. Further, the manager, or a public accountant or certified public accountant shall prepare and present to the Association an annual accounting for Association funds and a financial statement as set forth in the Act.

Section 7.3. Limitation on Powers. The Board may not act on behalf of the Association to amend the Declaration, to terminate the Community, or to elect directors or determine the qualifications, powers and duties, or terms of office of Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term.

Section 7.4. Execution of Documents. The Board, except as these Bylaws otherwise provide, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instance; and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

Section 7.5. Conflicts of Interest. If any contract, decision, or other action taken by or on behalf of the Board would financially benefit any member of the Board, or a descendent, an ancestor, a sibling, the spouse or descendent of a sibling, an estate or trust in which the director or a party related to a director has a beneficial interest, or an entity in which a party related to a director is a director, officer, or has a financial interest, then, in advance of entering into that contract, making the decision or taking the action, the interested Board member shall disclose the material facts as to the director's relationship or interest and as to the conflicting interest transaction. The Board may in good faith authorize, approve, or ratify the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum.

ARTICLE VIII OFFICERS

Section 8.1. Officers, Employees and Agents. The officers of the Association shall consist of a President, a Secretary, a Treasurer and may include one or more Vice Presidents and such other officers, assistant officers, employees and agents as may be deemed appropriate or necessary by the Board from time to time. Officers other than the President need not be directors. No person may simultaneously hold more than one office at a time.

Section 8.2. Appointment and Term of Office of Officers. The officers shall be elected by the Members.

Section 8.3. President. The President shall be a member of the Board and shall be the principal executive officer of the Association. The President shall preside at all meetings of the Board and at all meetings of the Members. Subject to the restrictions set forth in Section 7.4 above, the President shall have all authority necessary or incident to the office of President, except as such authority may be limited by the Board.

Section 8.4. Vice Presidents. The Vice President(s), if appointed, may act in place of the President in case of his or her death, absence or inability to act, and shall perform such other duties and have such authority as is from time to time delegated by the Board or by the President.

Section 8.5. Secretary. The Secretary shall be the custodian of the records of the Association; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law and that the books, reports and other documents and records of the Association are properly kept and filed; shall take or cause to be taken and shall keep minutes of the Board and of committees of the Board; shall keep at the principal office of the Association a record of the names and addresses of the Members; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned by the Board or by the President. The Board may appoint one or more Assistant Secretaries who may act in place of the Secretary for whatever reason, including in case of death, absence or inability to act.

Section 8.6. Treasurer. The Treasurer shall be responsible for overseeing the deposit of all funds in such depositories as shall be designated by the Board; shall keep correct and complete financial records and books of account and records of financial transactions and condition of the Association and shall submit such reports thereof as the Board may, from time to time, require; shall arrange for the annual reports required by these Bylaws; and, in general, shall perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned to it by the Board or by the President. The Board may appoint one or more Assistant Treasurers who may act in place of the Treasurer for whatever reason, including in case of death, absence or inability to act.

Section 8.7. Bonds. The Association shall obtain insurance, if reasonably available, covering officers or other persons handling funds of the Association.

ARTICLE IX INDEMNIFICATION OF OFFICIALS AND AGENTS

Section 9.1. Certain Definitions. A "Corporate Official" shall mean any director or officer, and any former director, officer, or committee member of the Association. A "Corporate Employee" shall mean any employee, and any former employee, of the Association. "Corporate Official" and "Corporate Employee" shall not include any officer, director, agent or employee of any managing agent employed by the Association, and no such person shall have a right of indemnification hereunder. "Expenses" shall mean all costs and expenses including attorneys' fees, liabilities, obligations, judgments and any amounts paid in reasonable settlement of a Proceeding. "Proceeding" shall mean any claim, action, suit or proceeding, civil or criminal, whether threatened, pending or completed, and shall include appeals.

Section 9.2. Right of Indemnification. The Association shall indemnify any Corporate Official and may, in the discretion of the Board, indemnify any Corporate Employee, against any and all Expenses actually and reasonably incurred by or imposed upon it in connection with, arising out of, or resulting from, any Proceeding in which it is or may be made a party by reason of (a) actual or alleged error or misstatement or misleading statement or act or omission or neglect or breach of duty while acting in an official capacity as a Corporate Official or Corporate Employee, or (b) any matter claimed against it solely by reason of being a Corporate Official or Corporate Employee. The right of indemnification shall extend to all matters as to which a majority of directors of the Association by resolution, or independent legal counsel in a written opinion, shall determine that the Corporate Official or Corporate Employee acted in good faith and such person reasonably believed that the conduct was in the Association's best interests and had no reasonable cause to believe that its conduct was improper or unlawful. The right of indemnification shall not extend to matters as to which the Corporate Official or Corporate Employee is finally adjudged in an action, suit or proceeding to have been liable for gross negligence or willful misconduct in the performance of its duty except to the extent that a court may determine, upon application, that despite such adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity. The right of indemnification shall not extend to any matter as to which said indemnification would not be lawful under the laws of the State of Colorado.

Section 9.3. Advances of Expenses and Defense. The Association may advance Expenses to, or where appropriate, may undertake the defense of, any Corporate Official or Corporate Employee, in a Proceeding provided that the Corporate Official or Corporate Employee shall comply with the requirements of C.R.S. 7-129-104.

Section 9.4. Rights Not Exclusive. The right of indemnification herein provided shall not be exclusive of other rights to which such Corporate Official or Corporate Employee may be entitled.

Section 9.5. Authority to Insure. Upon approval by the Members, the Association may purchase and maintain liability insurance on behalf of any Corporate Official or Corporate Employee against any liability asserted against it as a Corporate Official or Corporate Employee or arising out of its status as such, including liabilities for which a Corporate Official or Corporate Employee might not be entitled to indemnification hereunder. This authority, and the Member approval required to exercise it, shall not diminish any right or obligation of the Board to maintain insurance in accordance with the Declaration.

ARTICLE X NOTICE AND HEARING

Section 10.1. Notice and Hearing. In all instances where the Act, as amended from time to time, the Nonprofit Act, as amended from time to time, or the Association Documents require notice and hearing, the Board shall comply with a written policy adopted by the Board that provides:

- a. Not less than 15 days prior written notice of the action to be taken and the reasons for such action;
- b. An opportunity for the affected member ("Respondent") to be heard, orally or in writing, not less than five days before the action to be taken by either the Board or a hearing committee appointed by the Board as provided herein;

c. That the action taken shall be fair and reasonable taking into consideration all of the relevant facts and circumstances.

For all purposes of this section, notice shall be hand delivered or sent prepaid by United States mail to the mailing address of such Member or to any other mailing address designated in writing by the Member. Notice shall be deemed delivered, if hand delivered upon delivery, and if sent by United States mail, three days after mailing.

Section 10.2. Hearing Committee. In any instance that requires a hearing, the President may appoint a hearing committee ("Hearing Committee") of three natural persons who need not be Members of the Association. In appointing the members of the Hearing Committee, the President must insure that the members of the Hearing Committee be "Impartial Decision Makers" as that term is defined in C.R.S. 38-33.3-209.5. The President shall cause written notification of the names of the Hearing Committee members to be mailed to the Respondent at least 10 days before the date of the hearing. The decision of the President shall be final, except that the respondent may challenge any member of the Hearing Committee for cause because one or more of the members of the Hearing Committee are not Impartial Decision Makers at any time at least five days prior to the taking of evidence at the hearing. In the event of such a challenge, the Board shall determine the sufficiency of the challenge, without the President voting. If such a challenge is sustained, the President shall appoint another member to replace the challenged member of the Hearing Committee. All decisions of the Board in this regard shall be final. Failure to timely challenge the members of the Hearing Committee shall be deemed acceptance of the members of the Hearing Committee. The Hearing Committee shall elect a chairman and appoint a hearing officer (who may be the same person as the chairman) who shall take evidence and ensure that a proper record of all proceedings is maintained.

ARTICLE XI BOOKS AND RECORDS

Section 11.1. Books and Records.

a. The Association shall keep correct and complete books and records of account, shall keep minutes of the proceedings of its Members, its Board, and any committee of the Board in place of the Board, and shall keep, at its principal office in Colorado, its Articles of Incorporation, the Declaration, its Bylaws, resolutions adopted by the Board, minutes of all meetings of Members, the Board, and committees of the Board, a record of all actions taken by the Members and the Board by written ballot or written consent in lieu of a meeting for the past three years, all written communications within the past three years to Members generally as Members, a record of all actions taken by a committee of the Board in place of the Board on behalf of the Association, and a record of all waivers of notices of meetings of Members and of the Board or any committee of the Board. The Association shall maintain a record of Members in a form that permits preparation of a list of the names and addresses of all Members, showing the number of votes each Member is entitled to vote, including a list of the names and business or home addresses of its current directors and officers, its most recent annual report, all financial audits or reviews conducted during the immediately preceding three years, and any other document specifically required by C.R.S. 38-33.3-317. The Association may exclude from the records provided or available to Members, Members' telephone numbers or electronic mail or contact information or other private information such as bank account numbers, drivers' license numbers, social security numbers and similar information.

b. Association records may be purchased by any Member at reasonable cost for copies of Association records. All books and records of the Association shall be reasonably available for inspection by any Member or such Member's authorized agent. "Reasonably available" shall mean available for inspection at the Association's principal office, upon 10 days advance notice, during normal business hours. The Member requesting the documents must describe with reasonable particularity the records sought. Notwithstanding the above, all books and records may also be inspected at the next regularly scheduled meeting if such meeting occurs within 30 days after the request.

c. Membership lists, or any part thereof, may not be:

- i. Obtained or used by any person for any purpose unrelated to the Association or the property subject to the Declaration;
- ii. Used to solicit money or property unless such money or property will be used solely to solicit the votes of the Members in an election to be held by the Association;
- iii. Used for any commercial purpose; or
- iv. Sold to or purchased by any person.

d. Notwithstanding the foregoing provisions of this Section 11.1, should Colorado law be amended to more specifically state what constitutes records of the Association, the Association's obligations under this Section 11.1 shall be deemed to be modified to require access to, inspection of, and production of those records expressly stated.

Section 11.2. Public Disclosure.

a. Within 90 days after any change in the following information, the Association shall make the new information available to the Members, upon reasonable notice, in accordance with subparagraph (c) of this section:

- i. The name of the Association;
- ii. The name of the Association's designated agent or management company, if any;
- iii. A valid physical address and telephone number for both the Association and the designated agent or management company, if any;
- iv. The name of the Community;
- v. The initial date of recording of the Declaration; and
- vi. The reception number or book and page for the main document that constitutes the Declaration.

b. Within 90 days after the end of each fiscal year, the Association shall make the following information available to Members upon reasonable notice in accordance with subparagraph (c) of this section:

- i. The date on which its fiscal year commences;
- ii. Its operating budget for the current fiscal year;
- iii. A list of the Association's current assessments, including special assessments, if any;
- iv. Its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
- v. The results of its most recent available financial audit or review for the fiscal year immediately preceding the current annual disclosure;
- vi. A list of all Association insurance policies, including, but not limited to, property, general liability, Association director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits, policy deductibles, additional named insured, and expiration dates of the policies listed;
- vii. The Association's Bylaws, Articles of Incorporation and rules and regulations;
- viii. The minutes of the Board and Member meetings for the fiscal year immediately preceding the current annual disclosure; and
- ix. The Association's responsible governance policies adopted under C.R.S. 38-33.3-209.5.

c. It is the intent of this section to allow the Association the widest possible latitude in methods and means of disclosure, while requiring that the information be readily available at no cost to Members at their convenience. Disclosure shall be accomplished by one of the following means: Posting on an Internet web page with accompanying notice of the web address via first-class mail or e-mail; the maintenance of a literature table or binder at the Association's principal place of business; or mail or personal delivery. The cost of such distribution shall be accounted for as a Common Expense.

ARTICLE XII MISCELLANEOUS

Section 12.1. Amendment of Bylaws. The Members, by a majority of votes present in person or by proxy at a meeting called for that purpose shall have the power to alter, amend or repeal these Bylaws and to adopt new Bylaws. If, however, the Members make, amend or repeal any bylaw, the Board shall not thereafter amend the same in such manner as to defeat or impair the object of the Members in taking such action. These Bylaws may contain any provision for the regulation or management of the affairs of the Association not inconsistent with law, the Declaration or the Articles of Incorporation.

Section 12.2. Execution, Certification and Recording Amendments to Declaration. The President, or the Vice President in the President's absence, and the Secretary of the Association shall prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

Section 12.3. Statement of Account. The Association shall furnish to a Member, or to a First Mortgage or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association, a written statement setting forth the amount of unpaid Assessments currently levied against such Member's Lot. The statement shall be furnished within 14 calendar days after receipt of the request and is binding on the Association. The Association shall have the right to charge a reasonable fee for the issuance of such certificate.

Section 12.4. Corporate Reports. The Association shall file with the Secretary of State of Colorado, within the time prescribed by law, corporate reports on the forms prescribed and furnished by the Secretary of State and containing the information required by law, and shall pay the fee for such filing as prescribed by law.

Section 12.5. Fiscal year. The fiscal year of the Association shall begin on January 1 of each year and end the succeeding December 31. The fiscal year may be changed by the Board without amending these Bylaws.

Section 12.6. Share of Stock and Dividends Prohibited. The Association shall not have or issue shares of stock. No dividend shall be paid, and no part of the Association's income shall be distributed to its Members, directors or officers. Notwithstanding the foregoing, upon dissolution or final liquidation thereof, the Association may make distributions as permitted by the Declaration, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

Section 12.7. Loans to Directors, Officers and Members Prohibited. No loan shall be made by the Association to its Members, directors or officers, and any director or officer who assents to or participates in the making of any such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

Section 12.8. Limited Liability. Except as may otherwise be provided by law, no director or officer shall be liable for actions taken or omissions made in the performance of such director's or officer's duties except for wanton and willful acts or omissions.

Section 12.9. Minutes. Minutes or any similar records of the meetings of Members or of the Board, when signed by the Secretary or acting Secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that proper notice was given.

Section 12.10. Checks, Drafts and Documents. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons, and in such manner as, from time to time, shall be determined by resolution of the Board. Notwithstanding the foregoing, any check, draft or other order for payment of monies for \$500.00 or more shall require the signatures of two officers, one of which shall be the President.

IN WITNESS WHEREOF, the undersigned, being the President of Orchard Drive Homeowners Association, Inc. has hereunto set my hand this 31 day of October, 2012.

Lynn M. Gausig
President

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Orchard Drive Homeowners Association, Inc. a Colorado nonprofit corporation, and that the foregoing Bylaws constitute the Bylaws of said Association, as duly accepted by the Members as of August 27, 2012, and ratified by the Board on October 2, 2012.

Signed this 2 day of NOVEMBER, 2012.

RUDOLPH E KUEHLER
Rudolph E Kuehler
Secretary

APPENDIX
Colorado Statutory Provisions Referenced in Bylaws

7-128-206. Committees of the board

(1) Unless otherwise provided in the bylaws and subject to the provisions of section 7-129-106, the board of directors may create one or more committees of the board and appoint one or more directors to serve on them.

(2) Unless otherwise provided in the bylaws, the creation of a committee of the board and appointment of directors to it shall be approved by the greater of a majority of all the directors in office when the action is taken or the number of directors required by the bylaws to take action under section 7-128-205.

(3) Unless otherwise provided in the bylaws, sections 7-128-201 to 7-128-205, which govern meetings, action without meeting, notice, waiver of notice, and quorum and voting requirements of the board of directors, apply to committees of the board and their members as well.

(4) To the extent stated in the bylaws or by the board of directors, each committee of the board shall have the authority of the board of directors under section 7-128-101; except that a committee of the board shall not:

(a) Authorize distributions;

(b) Approve or propose to members action that articles 121 to 137 of this title require to be approved by members;

(c) Elect, appoint, or remove any director;

(d) Amend articles of incorporation pursuant to section 7-130-102;

(e) Adopt, amend, or repeal bylaws;

(f) Approve a plan of conversion or plan of merger not requiring member approval; or

(g) Approve a sale, lease, exchange, or other disposition of all, or substantially all, of its property, with or without goodwill, otherwise than in the usual and regular course of business subject to approval by members.

(5) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 7-128-401.

(6) Nothing in this part 2 shall prohibit or restrict a nonprofit corporation from establishing in its bylaws or by action of the board of directors or otherwise one or more committees, advisory boards, auxiliaries, or other bodies of any kind, having such members and rules of procedure as the bylaws or board of directors may provide, in order to provide such advice, service, and assistance to the nonprofit corporation, and to carry out such duties and responsibilities for the nonprofit corporation, as may be stated in the bylaws or by the board of directors; except that, if any such committee or other body has one or more members thereof who are entitled to vote on committee matters and who are not then also

directors, such committee or other body may not exercise any power or authority reserved to the board of directors in articles 121 to 137 of this title, in the articles of incorporation, or in the bylaws.

7-129-104. Advance of expenses to directors

(1) A nonprofit corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) The director furnishes to the nonprofit corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 7-129-102;

(b) The director furnishes to the nonprofit corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(c) A determination is made that the facts then known to those making the determination would not preclude indemnification under this article.

(2) The undertaking required by paragraph (b) of subsection (1) of this section shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in section 7-129-106.

38-33.3-209.5. Responsible governance policies - due process for imposition of fines

(1) To promote responsible governance, associations shall:

(a) Maintain accurate and complete accounting records; and

(b) Adopt policies, procedures, and rules and regulations concerning:

(I) Collection of unpaid assessments;

(II) Handling of conflicts of interest involving board members, which policies, procedures, and rules and regulations must include, at a minimum, the criteria described in subsection (4) of this section;

(III) Conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;

(IV) Enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines;

(V) Inspection and copying of association records by unit owners;

(VI) Investment of reserve funds;

(VII) Procedures for the adoption and amendment of policies, procedures, and rules;

(VIII) Procedures for addressing disputes arising between the association and unit owners; and

(IX) When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced, and improved by the association; whether there is a funding plan for any work recommended by the reserve study and, if so, the projected sources of funding for the work; and whether the reserve study is based on a physical analysis and financial analysis. For the purposes of this subparagraph (IX), an internally conducted reserve study shall be sufficient.

(2) Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations to the contrary, the association may not fine any unit owner for an alleged violation unless:

(a) The association has adopted, and follows, a written policy governing the imposition of fines; and

(b) (I) The policy includes a fair and impartial fact-finding process concerning whether the alleged violation actually occurred and whether the unit owner is the one who should be held responsible for the violation. This process may be informal but shall, at a minimum, guarantee the unit owner notice and an opportunity to be heard before an impartial decision maker.

(II) As used in this paragraph (b), "impartial decision maker" means a person or group of persons who have the authority to make a decision regarding the enforcement of the association's covenants, conditions, and restrictions, including its architectural requirements, and the other rules and regulations of the association and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the association.

(3) If, as a result of the factfinding process described in subsection (2) of this section, it is determined that the unit owner should not be held responsible for the alleged violation, the association shall not allocate to the unit owner's account with the association any of the association's costs or attorney fees incurred in asserting or hearing the claim. Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, a unit owner shall not be deemed to have consented to pay such costs or fees.

(4) (a) The policies, procedures, and rules and regulations adopted by an association under subparagraph (II) of paragraph (b) of subsection (1) of this section must, at a minimum:

(I) Define or describe the circumstances under which a conflict of interest exists;

(II) Set forth procedures to follow when a conflict of interest exists, including how, and to whom, the conflict of interest must be disclosed and whether a board member must recuse himself or herself from discussing or voting on the issue; and

(III) Provide for the periodic review of the association's conflict of interest policies, procedures, and rules and regulations.

(b) The policies, procedures, or rules and regulations adopted under this subsection (4) must be in

accordance with section 38-33.3-310.5.

38-33.3-317. Association records

(1) In addition to any records specifically defined in the association's declaration or bylaws or expressly required by section 38-33.3-209.4 (2), the association must maintain the following, all of which shall be deemed to be the sole records of the association for purposes of document retention and production to owners:

(a) Detailed records of receipts and expenditures affecting the operation and administration of the association;

(b) Records of claims for construction defects and amounts received pursuant to settlement of those claims;

(c) Minutes of all meetings of its unit owners and executive board, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions taken by any committee of the executive board;

(d) Written communications among, and the votes cast by, executive board members that are:

(I) Directly related to an action taken by the board without a meeting pursuant to section 7-128-202, C.R.S.; or

(II) Directly related to an action taken by the board without a meeting pursuant to the association's bylaws;

(e) The names of unit owners in a form that permits preparation of a list of the names of all unit owners and the physical mailing addresses at which the association communicates with them, showing the number of votes each unit owner is entitled to vote; except that this paragraph (e) does not apply to a unit, or the owner thereof, if the unit is a time-share unit, as defined in section 38-33-110 (7);

(f) Its current declaration, covenants, bylaws, articles of incorporation, if it is a corporation, or the corresponding organizational documents if it is another form of entity, rules and regulations, responsible governance policies adopted pursuant to section 38-33.3-209.5, and other policies adopted by the executive board;

(g) Financial statements as described in section 7-136-106, C.R.S., for the past three years and tax returns of the association for the past seven years, to the extent available;

(h) A list of the names, electronic mail addresses, and physical mailing addresses of its current executive board members and officers;

(i) Its most recent annual report delivered to the secretary of state, if any;

(j) Financial records sufficiently detailed to enable the association to comply with section 38-33.3-316 (8) concerning statements of unpaid assessments;

- (k) The association's most recent reserve study, if any;
- (l) Current written contracts to which the association is a party and contracts for work performed for the association within the immediately preceding two years;
- (m) Records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners;
- (n) Ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate;
- (o) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members; and
- (p) All written communications within the past three years to all unit owners generally as unit owners.

(2) (a) Subject to subsections (3), (3.5), and (4) of this section, all records maintained by the association must be available for examination and copying by a unit owner or the owner's authorized agent. The association may require unit owners to submit a written request, describing with reasonable particularity the records sought, at least ten days prior to inspection or production of the documents and may limit examination and copying times to normal business hours or the next regularly scheduled executive board meeting if the meeting occurs within thirty days after the request. Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations of the association to the contrary, the association may not condition the production of records upon the statement of a proper purpose.

(b) (I) Notwithstanding paragraph (a) of this subsection (2), a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a unit owner's interest as a unit owner without consent of the executive board.

(II) Without limiting the generality of subparagraph (I) of this paragraph (b), without the consent of the executive board, a membership list or any part thereof may not be:

(A) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the unit owners in an election to be held by the association;

(B) Used for any commercial purpose; or

(C) Sold to or purchased by any person.

(3) Records maintained by an association may be withheld from inspection and copying to the extent that they are or concern:

(a) Architectural drawings, plans, and designs, unless released upon the written consent of the legal owner of the drawings, plans, or designs;

(b) Contracts, leases, bids, or records related to transactions to purchase or provide goods or services that are currently in or under negotiation;

(c) Communications with legal counsel that are otherwise protected by the attorney-client privilege or the attorney work product doctrine;

(d) Disclosure of information in violation of law;

(e) Records of an executive session of an executive board;

(f) Individual units other than those of the requesting owner; or

(g) The names and physical mailing addresses of unit owners if the unit is a time-share unit, as defined in section 38-33-110 (7), C.R.S.

(3.5) Records maintained by an association are not subject to inspection and copying, and must be withheld, to the extent that they are or concern:

(a) Personnel, salary, or medical records relating to specific individuals; or

(b) Personal identification and account information of members, including bank account information, telephone numbers, electronic mail addresses, driver's license numbers, and social security numbers.

(4) The association may impose a reasonable charge, which may be collected in advance and may cover the costs of labor and material, for copies of association records. The charge may not exceed the estimated cost of production and reproduction of the records.

(5) A right to copy records under this section includes the right to receive copies by photocopying or other means, including the receipt of copies through an electronic transmission if available, upon request by the unit owner.

(6) An association is not obligated to compile or synthesize information.

(7) Association records and the information contained within those records shall not be used for commercial purposes.

38-33.3-401. Registration - annual fees

(1) Every unit owners' association organized under section 38-33.3-301 shall register annually with the director of the division of real estate, in the form and manner specified by the director.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), the annual registration shall be accompanied by a fee in the amount set by the director in accordance with section 12-61-111.5, C.R.S., and shall include the information required to be disclosed under section 38-33.3-209.4 (1). The information shall be updated within ninety days of any change, in accordance with section 38-33.3-209.4 (1).

(b) A unit owners' association shall be exempt from the fee, but not the registration requirement, if the association:

(I) Has annual revenues of five thousand dollars or less; or

(II) Is not authorized to make assessments and does not have any revenue.

(3) A registration shall be valid for one year. An association that fails to register, or whose annual registration has expired, is ineligible to impose or enforce a lien for assessments under section 38-33.3-316 or to pursue any action or employ any enforcement mechanism otherwise available to it under section 38-33.3-123 until it is again validly registered pursuant to this section. A lien for assessments previously filed during a period in which the association was validly registered or before registration was required pursuant to this section shall not be extinguished by a lapse in the association's registration, but any pending enforcement proceedings related to such lien shall be suspended, and any applicable time limits tolled, until the association is again validly registered pursuant to this section.

(4) Administratively final determinations by the director of the division of real estate concerning the validity or timeliness of registrations under this section are subject to judicial review pursuant to section 24-4-106 (11), C.R.S.